



Meeting of the Regional Planning Committee

Date: Wednesday 3 June 2020

Time: 10.00am

Venue: Online by Zoom invitation

Agenda

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Regional Planning Committee Members

Name	Represents
Karauna Brown	Te Kopere o te Iwi Hineuru
Tania Hopmans	Maungaharuru-Tangitu Trust
Tania Huata	Ngati Pahauwera Development and Tiaki Trusts
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
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

18
17
16
15
14

Number required for 80% support

14
14
13
12
11

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: FOLLOW-UPS FROM PREVIOUS REGIONAL PLANNING COMMITTEE MEETINGS

Item 4

Reason for Report

1. On the list **attached** are items raised at Regional Planning Committee meetings that staff have followed up. All items indicate who is responsible for follow up, and a brief status comment. Once the items have been reported to the Committee they will be removed from the list.

Decision Making Process

2. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives the report "*Follow-up Items from Previous Regional Planning Committee Meetings*".

Authored by:

Leeanne Hooper
GOVERNANCE LEAD

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

[!\[\]\(b64b40baaee5acddc1eab8538ba84754_img.jpg\) 1](#) Followups for June 2020 RPC meeting

Follow-ups from Previous Regional Planning Committee Meetings

RPC Meeting on 18 March 2020

ref	Agenda Item	Action	Responsible	Status Comment
1	New Ngāti Pāhauwera Development & Tiaki Trust appointee	Provide orientation/induction information to Tania Huata as new PSGE appointee	L Hooper	Initial stages underway as follows. 18/3/20 Provided and explained Travel Claim form & emailed Payroll Tax form 19/3/20 Leading up to 14/5/20 Tangata Whenua workshop, Annelie worked with Tania to enable working online with Zoom and Stellar access 15/5/20 L Hooper email to explain/clarify Payroll and Travel Reimbursement processes as relates to Payslip from Payroll officer and invitation to discuss further orientation/induction.
2	Tukituki: Request for Plan Change	Investigate options and undertake preliminary consultation on a potential plan change relating to Table 5.9.1D (Overseer) amendment	C Edmonds/ T Skerman	Decision item on 3 June 2020 RPC meeting agenda
3	RPC Terms of Reference	Seek agreement to amended ToR agreed by 25 September 2020 Regional Planning Committee and Regional Council resolutions.	L Hooper/ P Munro	Letters to PSGE Appointers sent 17 April and Pieri Munro currently liaising with PSGEs to ascertain further clarity or information requirements to enable their agreement.
4	RPC tangata whenua remuneration	Communicate updated remuneration as resolved by Regional Council on 26 February 2020	L Hooper	Communicated via email to each Tangata Whenua representative on 29 March 2020

2019 Meetings

ref	Action	Responsible	Status Comment
5	Schedule a Treaty of Waitangi workshop for Tangata Whenua, Councillors and HBRC Executive Leadership Team	P Munro	After having been postponed due to Covid-19 pandemic, the Treaty workshop is now scheduled on 5 August 2020.
6	Relationship building hui	P Munro	Liaison with Glenn Webber under way to schedule further hui as needed following the TToW workshop.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: CALL FOR MINOR ITEMS NOT ON THE AGENDA

Item 5

Reason for Report

1. This item provides the means for committee members to raise minor matters they wish to bring to the attention of the meeting.
2. Hawke's Bay Regional Council standing order 9.13 states:
 - 2.1. "A meeting may discuss an item that is not on the agenda only if it is a minor matter relating to the general business of the meeting and the Chairperson explains at the beginning of the public part of the meeting that the item will be discussed. However, the meeting may not make a resolution, decision or recommendation about the item, except to refer it to a subsequent meeting for further discussion."

Recommendations

3. That the Regional Planning Committee accepts the following "Minor Items Not on the Agenda" for discussion as Item 16:

Topic	Raised by

Leeanne Hooper
GOVERNANCE LEAD

James Palmer
CHIEF EXECUTIVE

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: PRESENTATION OF PETITION

Item 7

Reason for Report

1. This item provides the means for the Regional Planning Committee to receive a petition from Mr Paul Bailey, which he will present to the meeting.

Officers' Recommendation(s)

2. Council officers recommend that the Committee accepts the petition presented.

Background/Discussion

3. The petition is presented in accordance with the Hawke's Bay Regional Council Standing Order 16. following.

16. Petitions

16.1 Form of petitions

Petitions may be presented to the local authority or any of its committees. Petitions must contain at least 20 signatures and consist of fewer than 150 words (not including signatories). They must be received by the chief executive at least 5 working days before the date of the meeting at which they will be presented.

Petitions must not be disrespectful, use offensive language or include malicious statements (see standing order 19.9 on qualified privilege). They may be written in English or te reo Māori. Petitioners planning to make a petition in te reo Māori or sign language should advise the relevant Chairperson at least two working days before the meeting to enable the petition be translated and reprinted, if necessary.

16.2 Petition presented by petitioner

A petitioner who presents a petition to the local authority or any of its committees and subcommittees, may speak for 5 minutes (excluding questions) about the petition, unless the meeting resolves otherwise. The Chairperson must terminate the presentation of the petition if he or she believes the petitioner is being disrespectful, offensive or making malicious statements.

Where a petition is presented as part of a deputation or public forum the speaking time limits relating to deputations or public forums shall apply. The petition must be received by the chief executive at least 5 working days before the date of the meeting concerned.

4. The petition reads:
 - 4.1. *We ask that Hawke's Bay Regional council maintain its current policy of making consent application for water bottling plants publicly notifiable.*

Decision Making Process

5. 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 that the decision to receive the petition:
 - 5.1. does not significantly alter the service provision or affect a strategic asset
 - 5.2. is not significant under the criteria contained in Council's adopted Significance and Engagement Policy
 - 5.3. is not inconsistent with an existing policy or plan
 - 5.4. the Regional Planning Committee can exercise its discretion and make this decision without consulting directly with the community or others having an interest in the decision.

Recommendations

That the Regional Planning Committee receives the petition, which reads “*We ask that Hawke’s Bay Regional council maintain its current policy of making consent application for water bottling plants publicly notifiable*” from Mr Paul Bailey.

Authored by:

Leeanne Hooper
GOVERNANCE LEAD

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: HBRC TANK PLAN CHANGE SUBMISSION

Item 8

Reason for Report.

1. The Council publicly notified the Proposed TANK Plan Change 9 on 2 May 2020. This report describes an opportunity to refine some of the content of the Proposed Plan and proposes options to improve implementation.

Officers' Recommendation

2. Council officers recommend that Regional Planning Committee considers the options presented and recommends to Council that an HBRC submission to the Plan Change is lodged to improve the implementation of stream flow maintenance policy.

Executive Summary

3. The plan preparation process was initially led by the TANK group, a community-based decision-making group, who presented a draft plan to the Regional Planning Committee in 2018. The Regional Planning Committee completed the drafting and the Council notified the proposed plan in May 2020.
4. The proposed stream flow maintenance solution provides a means to manage the cumulative stream flow depletion effect of all the groundwater abstraction in the Heretaunga Plains. The implementation of the policy relies on development of solutions by permit holders through conditions on consent. An informal working group was established in December to consider what would be needed to support consent applicants to enable the policy to be successfully implemented.
5. This work led to identification of alternative implementation approaches that have been further developed for the Committee's consideration. This is with a view to the Council making its own submission to further refine and improve the Plan's proposed approach for managing stream depletion maintenance. It also provides the opportunity to align with other work programmes being initiated by the Council
6. Note that the resolution of this issue and decisions on the Council's own submission will be considered by the hearing panel (which is yet to be set up) alongside all other submissions made on the Proposed Plan. It does not automatically amend the plan, nor does it necessarily have greater weight than other submissions. A submission enables other options to be considered more widely by other during the hearings process. The Council's submission would be available for other submitters to support or oppose through the further submission process. Following receiving further submissions, all submissions will be analysed and incorporated into a section 42A report for the Hearings Panel.

Background/Discussion

7. The proposed plan change includes stream flow maintenance and habitat enhancement scheme measures that enable water users to maintain stream flows, mitigate the delayed and indirect stream depletion effects of collective groundwater takes and avoid restrictions on water takes. Key features of the approach in the proposed plan change are:
 - 7.1. Water permit holders' obligation to this mitigation scheme would be imposed through resource consent conditions (Policy 39 and TANK Rule 9)
 - 7.2. the plan enables collective establishment and management of stream flow maintenance solutions by permit holders (Policy 39 and schedule 36)

- 7.3. the development and implementation of the stream flow solutions is to be rolled out as water permits are replaced or reviewed (Policy 39 and TANK Rules 9 and 18).
8. Those provisions reflect the collaborative approach to developing a pathway towards better resource management. Resource users (land and water users) favoured solutions that empowered them to make choices about how to meet the objectives stated in the Plan.
 9. This solution was modelled on a successful approach in Twyford whereby water permit holders worked together to meet minimum flow triggers and avoid being subject to bans for the Raupare Stream. It was local leadership and local initiatives that enabled innovative solutions for a single waterway in response to issues arising for those consent holders around trigger flows for bans on water takes.
 10. The draft TANK Implementation Plan notes the need for Council to support the establishment of Water User Collectives and ensure they have access to required water information in order to develop feasible flow maintenance solutions. However, little detail was developed regarding what is required to support consents applicants in how to comply with this aspect of the Plan. Further consideration was required to identify the support measures necessary to enable effective implementation.
 11. An informal working group (made up of iwi and TANK Group representatives including from Napier and Hastings Councils and policy, science and consents staff) was established in December 2019 to progress this aspect of the Plan and to understand how implementation could be supported including the resources needed to implement the policy and other management aspects. The analysis by this group identified some opportunities, leading to this report and a recommendation to lodge a submission.
 12. The Section 32 report's evaluation of this issue concentrated more on the feasibility of the solution rather than on the method of delivery, as it was the concept that was of most concern to stakeholders, including iwi.
 13. However, in examining how to support implementation of this policy, the working group gave consideration to how the management approach was successfully adopted in Twyford. They raised a concern that this collective approach might not automatically translate well to a wider scale for multiple waterways as a way of managing the cumulative effects of nearly two thousand permit holders although they recognised the value in this approach in some circumstances.
 14. These aspects of the Plan are complex and without appropriate support pose significant implementation risk, particularly in managing identification and assessment of feasible solutions, equitable funding across all affected streams and funding and roll out. The working group highlighted a possible risk that scheme development by consent holders could be haphazard and incomplete resulting in failure which would have huge implications for future water supply and demand in the Heretaunga Plains.
 15. Key complexities about successful implementation are described in more detail below. They are not related to new information as the complexities of managing ground and surface water in the Heretaunga Plains are already known. However, they prompted the working group to examine other options and to suggest these be considered further. While Policy 39 can be implemented by Council with appropriate resourcing, it does present some challenges which can be managed by an alternative implementation approach. The main areas presenting implementation challenges are:
 - 15.1. solutions accounting for spatial differences according to permit expiry
 - 15.2. not all streams are suited to the same types of solutions
 - 15.3. managing timing for roll out of solutions
 - 15.4. benefits of regional solutions versus local solutions
 - 15.5. ability to prioritise
 - 15.6. social challenges

15.7. complexity.

Managing solution development spatially by consent expiry dates

16. According to modelling, all current water permits to take groundwater in the Heretaunga Plains contribute to stream depletion, but their effects are unevenly distributed (both in relation to total impact and percentage (%) contribution to stream depletion in each stream). Each permit is required to contribute to a stream flow maintenance and enhancement scheme of the *most* affected stream (where the take is having its biggest stream depletion effect). However, takes may have effects on more than one stream and the plan does not clearly describe how solutions across all streams can be provided for effectively and according to permit expiry.
17. Permits with common expiry dates (in similar areas) are not necessarily the only permits with a stream depletion effect for any one stream. While all permit holders will be required to mitigate their stream depletion effect (upon review or re-application under this plan), it also requires a permit holder to be linked to the stream of greatest effect for any ban. There are nearly 2000 permits likely to be affected by these provisions and managing this many within the proposed management regime will be complex and challenging.

Applicable Streams

18. It has been noted that not all streams are well-suited to stream flow maintenance solutions. For example, in parts of the Paritua Stream where natural flow losses to groundwater are significant and a separate policy (Policy 44) directs Council to develop other solutions. The plan does not require these permits to be subject to a ban if there are no feasible pumping schemes. However, if a feasible scheme does not exist, it is unclear whether they still need to contribute to alternative solutions to mitigate their cumulative stream depletion effect.
19. Further, the working group identified that the proposed flow trigger for the Tūtaekurī-Waimate has not previously been reached. While permits will cause (cumulative) stream depletion on this and on other streams, they would be subject to a ban linked to the Tūtaekurī-Waimate Stream as it is the *most* affected stream. As the chances of a ban are low, a permit holder would be unlikely to choose to contribute to a stream flow maintenance scheme.

Managing roll-out of stream depletion solutions

20. The feasibility assessment, design and construction processes for each solution will not necessarily align with the expiry dates of permit holders who will need to contribute to that scheme.
21. Currently, the proposed plan takes a consent by consent approach that requires a solution for each consent. While collective action is envisaged, there is as yet no process established to enable this, despite the provisions of schedule 36. This is especially challenging given the number of consent holders involved.
22. Each permit is obliged to contribute to stream flow depletion solutions equivalent to their total stream depletion effect, but the focus is on their most affected stream. (They may also choose to go on ban instead). The way in which the plan ensures allocation of funds to all affected streams as they are developed over time has yet to be determined.

Regional solutions versus individual solutions

23. Some permit holders may be able to develop their own stream flow maintenance solution by virtue of the scale of their operation. There is a risk that potential solutions providing regional efficiency and effectiveness will be weakened by development of smaller scale localised or individual solutions. An analogy is where the Council provides regional solutions for things with wide public benefits like stop banks for flood protection. While individuals might be able to provide their own, it may be at the expense of others or wider public benefit.

24. Assessment of the overall costs and benefits of the preferred solutions should ideally be done at a catchment scale so that overall efficiency and effectiveness of the solutions can be optimised.
25. There is an opportunity for resolution of this issue to focus on regional benefit rather than private solutions/benefits. There is no mechanism by which a regional approach to the development of solutions by consent holders is currently enabled or required.
26. This regional approach potentially allows for larger scale measures that provide benefits for more streams. It includes consideration of water storage and release schemes that would provide mitigation at a larger scale than envisaged by the groundwater pumping solutions alone.
27. Through the 2018-28 LTP Council established regional funding and policy for community scale water augmentations schemes. This funding was used as leverage for a more ambitious programme of work through the Provincial Growth Fund. Delays resulting from 2019 Council Elections and PGF negotiations meant that HBRC could only recently commit to and fund a leadership role in relation to this aspect of TANK (The Heretaunga PGF Agreements were only signed by the Crown on 20 April 2020), supporting the solutions suggested in this submission.

Prioritising

28. The Proposed Plan does not enable prioritising any particular scheme. For example, the Plan does not enable fast tracking or priority development of a highly effective solution or any scheme that provides benefit for multiple permit holders. The proposed mechanism initiates solutions by conditions on water permits and this will depend on expiry date of the permit.

Social Challenges

29. The plan requires contribution to or development of a solution on a permit by permit basis. The plan enables permit holders to work collectively, but there is little to guide how permit holders can do this effectively, nor force them to work collectively. Some permit holders, especially small-scale water users may prefer just to contribute to an established scheme and not be part of a more sophisticated management system. There are nearly two thousand water permits affected by these provisions and this large number adds to the challenge of deciding on and developing workable solutions.

Simplicity

30. Implementing solutions to offset the collective impacts of groundwater use on the Heretaunga Plains, without resorting to potentially catastrophic bans and/or allocation clawbacks, was always going to represent a significant challenge for all water users. Although the Twyford operating model provided some comfort that the proposed solution was both practical and implementable, it was acknowledged that it was not without its challenges. Staff agree that a community scale approach stands a greater chance of success and now that we are in a position to do that then it is appropriate to incorporate it as a policy implementation pathway.
31. There is an opportunity to consider alternative solutions that enable the same objectives to be met in a more cost effective, simpler and efficient way. The HBRC has access to resources, including funding, staff and information as well as wider functions and powers to develop solutions that are delivered through plan policies and rules. The Council has a potential role to play in helping to understand what the most appropriate solutions are using efficient and cost-effective means on behalf of the water permit holders and wider community.

Options Assessment

Options for Managing Stream Depletion

Option 1 – status quo

32. This option is for no Council submission to amend to Policy 39 and its associated provisions and leave it to other submitters to raise. We expect that given the complexity and costs involved, we will almost certainly get submissions.

33. The advantage of this approach is that submitters can consider these challenges and provide their own solutions. The stream depletion effect caused by permit holders remains an issue to be resolved by permit holders.
34. The disadvantage is that solutions may focus at an individual or water permit scale with little consideration of joining-up local solutions. The complexity inherent in requiring individual consent holders to collaborate across spatial, temporal and proportional differences is a significant risk to plan implementation. It is likely that industry representation will be made on behalf of sector interests. However, industry and sector interests may not be able to account fully for wider community and iwi interests in developing efficient or effective solutions for all affected streams and rivers at a catchment scale.
35. This status quo option does not enable the Council to show leadership and develop appropriate catchment scale water management solutions that address a cumulative effect from multiple water permit holders across the Heretaunga Plains.
36. Further, decision-making and solution finding will be bound by the scope of submissions received at this stage, therefore there is a risk that targeted narrow-focussed submissions would preclude Hearing Panel's consideration of wider range of solutions, even if one of those solutions was far superior.

Option 2 – Council led approach

37. This option is for Council itself to make a submission on the TANK plan seeking amendment of Policy 39 and associated provisions. This would proactively and intentionally ensure that the scope of solutions which the Hearings Panel can consider does indeed include Council-led, catchment-wide solutions that also account for opportunities to leverage government funding and ensure the necessary links are made with the work currently underway through the Water Security programme.
38. A Council submission provides stakeholders with necessary information about the Council's wider water security programme and how it can complement the direction and implementation of the TANK Plan. The Council is currently taking advantage of its own LTP and government funding of the Regional Water Security project which is identifying possible options for and assessing feasibility of solutions that will improve water security for water users, enable stream flows to be maintained across Heretaunga Plains waterways and the Ngaruroro River, improve aquatic ecosystem health and contribute to supporting development of community resilience in the face of climate change.
39. It should be noted that by the Council making a submission, does not guarantee that the Council's request will be automatically upheld by the Hearings Panel. The Hearings Panel will need to consider the merits of the Council's submission and those further submitters who may support or oppose the requested amendment.
40. This report suggests reconsidering the approach taken to manage the cumulative impact of multiple takes on lowland streams in the Heretaunga Plains and to develop a catchment-wide approach. A more co-ordinated and Council-led structured approach should be considered to identify options, assess feasibility, and develop management solutions for maintaining the flows in lowland streams above trigger flows. This sort of approach depends on the Regional Council playing a key leadership and facilitation role.
41. This approach potentially enables more cost effective and efficient stream flow maintenance solutions to be delivered across all affected consents and connected water bodies. The complexities involved in making individual consent holders responsible for solutions that address cumulative effects at the scale envisaged are described above. These complexities support the Council taking a stronger lead role to developing solutions.
42. In parallel, the Plan also specifically identified a storage and release solution needed to be investigated for managing the stream depletion effect on the Ngaruroro River. It recognises that the scale and complexity of this scheme requires a catchment scale approach and that the HBRC plays a critical role in working with iwi and affected communities to identify options and assess feasibility. A submission by Council on this issue will allow consideration of a similar approach to manage the stream depletion

effects by the same permit holders and enable consideration of more integrated solutions.

43. Storage and release solutions can sit alongside groundwater pumping solutions that collectively enable the stream flow maintenance requirements to be met. Storage solutions are more likely to be at a catchment scale and potentially more costly than single stream based pumping solutions.
44. An approach that involves Council direction and co-ordination at a catchment scale requires amendments to the proposed TANK Plan policy 39 that directs how stream flow maintenance and habitat enhancement schemes are developed, implemented and funded by consent holders.
45. This policy change also has implications for Council's budget, although the Water Security Programme already underway already addresses this issue.

Funding and timing challenges

46. Previous legal advice made it clear that consent conditions could not make consent holders dependant on the Council or third party to carry out an action before they can be compliant. A service charge could not be imposed through a resource consent because the service (stream flow maintenance scheme) has not yet been established by the Council and there is no detail or certainty for consent holders about costs and what this entails.
47. An alternative to the proposed plan requirements is for Council to carry out all the investigation, feasibility and design work for stream flow maintenance solutions. Timeframes could be specified to ensure the work is undertaken in a timely manner. Work to establish the Water User Collectives where appropriate could also be commenced in the interim as part of the development of management and operational planning for each scheme where necessary.
48. An alternative funding solution to support the Council's involvement in developing catchment wide solutions needs to be developed. Options include:
 - 48.1. The use of the financial contribution mechanism in the RMA (section 108).
 - 48.2. Developing water security solutions and imposing targeted rates to fund them.
 - 48.3. Establishing a separate entity and make contributions to or membership of the entity a condition of water abstraction.

Financial Contributions

49. In order for a financial contribution payment to be imposed on a consent holder under the RMA, firstly the regional plan must state the purpose for which the financial contribution is required, and describe the manner in which the level of contribution is determined.
50. The purpose for a financial contribution can be clearly linked to the provision of a stream flow maintenance or habitat enhancement scheme that maintain trigger flows at the specified levels or reduce water temperatures or increase oxygen levels to the levels stated in objectives.
51. The manner for determining the level of contribution can also be clearly described in terms of the stream depletion quantity or rate calculated for each permit and the costs calculated as an equitable proportion of the total costs of the schemes. (An exception can still be provided for consents to take water for essential human health as already intended by the proposed plan).
52. The plan could require a financial contribution to be payable only after the scheme solutions have been developed and agreed by Council in consultation with the community, iwi and permit holders. The actual amount of contribution will be calculated and imposed through a consent review condition once the stream flow maintenance solutions have been identified. Council would underwrite the costs until all consents have been reviewed under the new plan policies.

53. However, the financial contribution is generally a one-off up-front contribution to a solution. In this case we will have on-going operational scheme costs that will need to be funded.

Targeted Rate

54. One way of Council funding the costs of developing, constructing and operating the stream flow solutions is through a rate charged either spatially in the area receiving this service or via holders of water permits who take water in the service area. A rate can also be used to recover operational costs from those who receive the benefits of this service. They can be met by a rate solution that either covers all costs or may be used to cover the operational cost short fall identified as a concern with financial contributions.
55. As above, this option also relies on the Council taking a lead role to explore and develop stream flow maintenance solutions as part of its broader local government roles and responsibilities. The details of funding policies via rates etc do not need to be specified in the TANK plan, but the establishment of a rate becomes a method of implementation.
56. A rate removes implementation and funding of stream flow maintenance solutions out of RMA plan rules and therefore requirements are not imposed on water permit holders through consent conditions.
57. This funding solution for the stream flow maintenance takes some of the control and contribution to developing solutions away from water permit holders and places it with the Council as the provider of the service. It is potentially less flexible than the financial contribution option as it does not readily enable wateruser involvement in a way that allows for local solutions and management, as exemplified by the Twyford Irrigators.

Contribution or membership to a separate entity

58. This option relies on an entity, which may include Council or be a wider council and community entity, to develop, construct and operate all or some of the water solutions. A permit holder's future water use would be contingent on the membership or contribution to the entity.
59. The entity would require the mandate to carry out this work and a clear pathway towards the solutions development. Such an entity does not currently exist so the Proposed TANK plan would need to be amended explicitly enable this approach to be developed. Future plan changes would also be required to enable such a provision to be given effect to.

Application

60. We recommend removing the option for permit applicants to elect a ban as an opt out for contributing to a scheme. This is because all permits contribute to the cumulative stream depletion effect, however, in some streams a ban has no impact on the permit holder (e.g. Tutaekuri-Waimate) or there may be alternative management solutions for a particular stream (such as has been identified for the Paritua). The schemes under this recommended approach would be developed as a catchment-wide solution for all the cumulative effects and the costs can be spread equitably across all consent holders.

Policy direction: Draft amendments to Policy 39

61. We have not yet been able to comprehensively develop the funding options to the point of being able to recommend a single option. Consequently, the recommended submission seeks changes be made to Policy 39 to enable a Council led development of the stream flow maintenance solutions that signals the commitment by Council to provide a greater degree of leadership and co-ordination and includes a direction to develop a funding mechanism that imposes the costs of the mitigation on water permit holders. This submission would provide a guide to other submitters about Council's intentions and if supported enable further details of precise funding solution to be developed as part of the submissions and hearings process with stakeholder inputs.
62. The submission is recommended to read as follows.
- 62.1. **Delete** Policy 39 and **replace** it with a new policy along the following lines:

The Council will

- (a) consult with iwi and other relevant parties to investigate the environmental, technical, cultural and economic feasibility of options for stream flow maintenance and habitat enhancement schemes including water storage and release options and groundwater pumping and discharge options that:
 - (i) maintain stream flows in lowland rivers above trigger levels where groundwater abstraction is depleting stream flows and:
 - (ii) improve oxygen levels and reduce water temperatures:
- (b) determine the preferred solutions taking into account whether:
 - (i) wide-scale aquatic ecosystem benefits are provided by maintaining stream flow across multiple streams
 - (ii) multiple benefits can be met including for flood control and climate change resilience
 - (iii) the solutions are efficient and cost effective
 - (iv) scheme design elements to improve ecological health of affected waterbodies have been incorporated
 - (v) opportunities can be provided to improved public access to affected waterways.
- (c) develop and implement a funding mechanism that enables the Council to recover the costs of developing, constructing and operating stream flow maintenance and habitat enhancement schemes from permit holders, including where appropriate,
 - (i) management responses that enable permit holders to manage local solutions and
 - (ii) commitment to develop any further plan change within an agreed timeframe if necessary to implement a funding solution
- (d) ensure that stream flow maintenance and habitat enhancement schemes are constructed and operating within ten years of the operative date of the Plan while adopting a priority regime according to the following criteria:
 - (i) solutions that provide wide-scale benefit for maintaining stream flow across multiple streams
 - (ii) solutions that provide flow maintenance for streams that are high priority for management action because of low oxygen levels
- (e) review as per Policy 42 if no schemes are found to be feasible.

62.2. Make amendments to TANK Rules 9 and 18 and Schedule 36, plus other consequential amendments to enable the new policy to be implemented.

Strategic Fit

63. The submission is consistent with the delivery of multiple strategic goals including in relation to water quality safety and certainty, sustainable land use, and sustainable services and infrastructure.

Significance and Engagement Policy Assessment

64. The Council's submission will be considered along with all other submissions made on the Plan by the Hearings Panel (which is yet to be appointed). It is part of the submission-making processes in Schedule 1 of the RMA.

65. In terms of Council's Significance and Engagement Policy, this matter is Not Significant.

Climate Change Considerations

66. The submission does not directly impact on climate change however, the implementation of this policy will contribute to climate change mitigation and adaptation.

Considerations of Tangata Whenua

67. The RPC has already considered tangata whenua impacts of the proposed TANK plan change in meetings since August 2018 including in respect of stream flow maintenance.
68. All submitters including iwi authorities and marae within the TANK catchments are being invited to make submissions on the proposed Plan Change themselves. There is also a subsequent opportunity to make further submissions in support or opposition of any original submission.

Financial and Resource Implications

69. This aspect of the plan implementation already had implications for Council budgets and staff resources, particularly in relation to enabling and supporting permit holders to develop stream flow maintenance solutions.
70. This new policy places more responsibility on Council to find solutions and provide community leadership and allows a more regional focus that can account for wider community benefits. It also potentially enables the use of other Council powers such as rating to address recovery of costs. Some risk that all costs may not be recovered from consent holders exists and Council will underwrite costs of scheme development until water permits become subject to the new plan provisions.

Consultation

71. This decision enables submitters and those with an interest in the Proposed TANK Plan Change to support or oppose the council's submission as part of the Schedule 1 process. Advice about the submission can be provided to submitters as part of the plan consultation process currently underway.

Decision Making Process

72. 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:
 - 72.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 72.2. The use of the special consultative procedure is not prescribed by legislation.
 - 72.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 72.4. The persons affected by this decision are iwi and stakeholders with an interest in the management of water in the TANK catchments, particularly the Heretaunga Plains
 - 72.5. The decision is not inconsistent with an existing policy or plan.
 - 72.6. 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 receives and considers the "HBRC TANK Plan Change Submission" staff report.
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 the Committee can exercise its discretion and make decisions on this issue without conferring directly with the community or persons likely to have an interest in the decision.

- 2.2. Lodges a submission on the Proposed TANK Plan Change 9 before 3 July 2020 that seeks replacement of Policy 39 with a new policy along the following lines.

2.2.1. Hawke's Bay Regional Council will:

- (a) consult with iwi and other relevant parties to investigate the environmental, technical, cultural and economic feasibility of options for stream flow maintenance and habitat enhancement schemes including water storage and release options and groundwater pumping and discharge options that:
 - (i) maintain stream flows in lowland rivers above trigger levels where groundwater abstraction is depleting stream flows and:
 - (ii) improve oxygen levels and reduce water temperatures:
- (b) determine the preferred solutions taking into account whether:
 - (i) wide-scale aquatic ecosystem benefits are provided by maintaining stream flow across multiple streams
 - (ii) multiple benefits can be met including for flood control and climate change resilience
 - (iii) the solutions are efficient and cost effective
 - (iv) scheme design elements to improve ecological health of affected waterbodies
 - (v) opportunities can be provided to improved public access to affected waterways.
- (c) develop and implement a funding mechanism that enables the Council to recover the costs of developing, constructing and operating stream flow maintenance and habitat enhancement schemes from permit holders, including where appropriate,
 - (i) management responses that enable permit holders to manage local solutions and
 - (ii) commitment to develop any further plan change within an agreed timeframe if necessary to implement a funding solution
- (d) ensure that stream flow maintenance and habitat enhancement schemes are constructed and operating within ten years of the operative date of the Plan while adopting a priority regime according to the following criteria:
 - (i) solutions that provide wide-scale benefit for maintaining stream flow across multiple streams
 - (ii) solutions that provide flow maintenance for streams that are high priority for management action because of low oxygen levels
- (e) review as per Policy 42 if no schemes are found to be feasible.

- 2.2.2. make amendments to TANK Rules 9 and 18 and Schedule 36, plus other consequential amendments as necessary to enable the new policy to be implemented including removing a choice between contribution to stream flow maintenance and a ban on abstraction at trigger flows.

Authored by:

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SENIOR PLANNER

Ceri Edmonds
MANAGER POLICY AND PLANNING

Approved by:

**Tom Skerman
GROUP MANAGER STRATEGIC
PLANNING**

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: PROPOSED PLAN CHANGE 6A: TUKITUKI CATCHMENT TABLE 5.9.1D

Item 9

Reason for Report

1. This report presents a proposed plan change to amend Table 5.9.1D in the Hawke's Bay Regional Resource Management Plan (RRMP), recalibrating the nitrogen leaching figures using the current version of OverseerFM. A technical fix is highly desirable to ensure that all resource consent applications within the Tukituki Catchment use the current and only available version of Overseer.

Officers' Recommendation(s)

2. Council officers recommend that the Committee considers the information provided within and attached to this agenda item to determine whether to initiate a plan change to the Regional Resource Management Plan (RRMP) as proposed.
3. Further, staff recommend that, subject to their consideration of feedback received on pre-notification consultation, the Committee agrees to publicly notify Proposed Plan Change 6A: Tukituki Catchment Table 5.9.1D,. This consultation is currently being undertaken and feedback will be provided through a supplementary report prior to this meeting.

Executive Summary

4. The proposed plan change ensures that the RRMP prescribes the right 'tools' for resource consenting by recalibrating the nitrogen leaching table (Table 5.9.1D) to reflect the equivalent numbers generated by the current and only available version of Overseer.

Background

5. At the start of this year, Federated Farmers requested the Council initiate a plan change to rectify the issue arising from the nitrogen leaching table being based on a much older version of Overseer. Typically, Overseer FM estimates a higher leaching rate than Overseer v5.4.3 (used in developing Table 5.9.1D) from exactly the same inputs. This leaching estimate is one of the determinants for needing resource consent, and it also determines the activity status for any such consent application (whether restricted discretionary or non-complying)
6. The request from Federated Farmers was considered by the RPC at their meeting on 18 March 2020. RPC recommended preliminary consultation be undertaken on making such a change. That RPC report contains more background on the issue and request.
7. In the meantime, a drought has been declared and COVID 19 restrictions are still in force. Note that the separate report to this committee meeting on implementation of the original Tukituki plan change 6 sets out the actions that Council has taken as a consequence of the drought and lockdown with respect to the need for farmers to gain consent.

Origins of Table 5.9.1D

8. Prior to commencing consultation, staff have undertaken further research on the origins of Table 5.9.1D, to better understand what farm system information was used in estimating nitrogen leaching with Overseer v5.4.3. This was to ensure that the same information would be used in re-estimating nitrogen leaching using OverseerFM.
9. The 'natural capital' approach was first investigated as a potential approach for managing Nitrogen at a farm scale for the Tukituki Catchment Plan in a 2012 report

Nutrient Management Approaches for the Tukituki Catchment, commonly referred to as the Benson report.

10. In the report a Land Use Capability (LUC) based Nitrogen loss table was created. It saw allowable leaching rates varying spatially across the landscape, with the spatial variation being linked to the underlying LUC. Overseer nutrient modelling software was used to determine a Nitrogen leaching limit for each LUC.
11. The approach was initially developed by Dr Alec McKay for the Manawatu-Wanganui Regional Council (Horizons) and has been used in their One Plan since it became operative in 2013. The approach is explained in the following technical document:
 - 11.1. <http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/Defining-nutrient-nitrogen-loss-limits-within-a-water-management-zone-on-the-basis-of-the-natural-capital-of-soil.pdf?ext=.pdf>
12. Using this approach, the following table was developed for the Tukituki Catchment:

Table 1: LUC leaching rates for Tukituki Catchment

LUC Class	I	II	III	IV	V	VI	VII	VIII
Rate (KgN/ha/year)	30.1	27.1	24.8	20.7	20	17	11.6	3

13. It was not included in the originally notified proposed Tukituki Catchment Plan Change 6 in 2012. Instead, it was inserted as Table 5.9.1D through the Board of Inquiry process in 2015.
14. It is important to note this natural capital approach does not link to the RRMP limits and targets for nitrogen in surface and ground water in the Tukituki Catchment.
15. In 2012, the approach was new and novel. It has since met much scrutiny over its lack of relationship with Nitrogen loads in river, for example through the Waikato and Bay of Plenty Regional Councils' recent plan changes on nitrogen leaching.
16. For Waikato's proposed plan change, the hearings panel made the following comments, which equally apply to the Tukituki Catchment, where Table 5.9.1D sets the activity status for farming activities and nitrogen leaching:
 - 16.1. *The downside of specifying N leaching numbers is that those numbers have been identified using a version of Overseer that has now been superseded by OverseerFM, and that means that there will be something of a mismatch between future modelled N leaching numbers and the trigger values we recommend. However, we will address that to some extent by the policies we will recommend, and the significance of any mismatch is reduced by the fact that the significance of the nominated values is that they determine consent status, rather than acting as hard limits.*
 - 16.2. <https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/Volume-1-Hearings-Panel-Recommendations.pdf> (paragraph 696, page 160).

Recalibrating Table 5.9.1D

17. Table 5.9.1D can be recalibrated using the latest version of Overseer to enable the relative consenting activity status thresholds to be retained between the use of Overseer v5.4.3 and Overseer FM (i.e. if a farm required a restricted discretionary consent using Overseer v 5.4.3, it would still need a restricted discretionary consent under OverseerFM).
18. Horizons used Massey University to undertake this work. The reports associated with the recalibration are below.
 - 18.1. [http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-\(Part-A-and-B\)-January-2018.pdf?ext=.pdf](http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-(Part-A-and-B)-January-2018.pdf?ext=.pdf)
 - 18.2. [http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-\(Part-C\)-July-2018.pdf?ext=.pdf](http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-(Part-C)-July-2018.pdf?ext=.pdf)

19. If Table 5.9.1D is based on the Horizons table, then it may be a simple exercise of updating using the same percentage changes.
20. The table below applies the percentage increases determine in Horizons table to Table 5.9.1D

Table 2: Recalibration of Table 5.9.1D

	LUC I	LUC II	LUC III	LUC IV	LUC V	LUC VI	LUC VII	LUC VIII
Original (v 5.2.6) kgN/ha/ year	30.1	27.1	24.8	20.7	20	17	11.6	3
Revised kgN/ha/ year	50.9	45.3	41.7	33.8	31.3	27	16.4	4.5
Change	69.0%	67.0%	68.3%	63.3%	56.3%	58.7%	41.3%	50.0%

Options Assessment

21. Three main options have been considered to address the issue arising in Table 5.9.1D from the use of Overseer in estimating nitrogen leaching.

Option 1: Recalibrate Table 5.9.1D using OverseerFM on the same farm systems assessed under Overseer v5.4.3

- 21.1. In the first option, a technical change is made to the plan as the RMA still requires a plan change to be made when any technical material is updated. Table 5.9.1D was generated using Overseer v5.4.3, which is outdated and no longer available. This change generates the equivalent leaching rates from the same farm systems using OverseerFM, the most up to date and only available version of Overseer

Option 2: Do not proceed with the plan change to recalibrate Table 5.9.1D

- 21.2. No change is made to the plan with the second option. In practice, OverseerFM would be used to estimate nitrogen leaching in the absence of any other available tool. The mis-match of estimates generated by the two versions would not be addressed through the plan. Rather, the resource consent process would somehow need to accommodate the differences.

Option 3: Undertake a comprehensive review of how best to estimate nitrogen leaching

- 21.3. The third option recognises that there are existing issues in the use of Overseer as a tool for regulating nitrogen leaching. For example, the Parliamentary Commissioner for the Environment in his 2018 report *Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways* identifies a number of issues relating to the use of Overseer in regulation. This change would involve a comprehensive review of how best to estimate and manage nitrogen leaching. Accordingly, it would take much longer to prepare as no alternative tool has been developed and there is no obviously better alternative management regime.
22. The table below provides a summarised evaluation of each option, in accordance with Section 32 RMA. Further detail of the analysis is provided in Appendix A: Section 32 Evaluation of proposed change: Tukituki catchment Table 5.9.1D.

Table 3: Summary s32 evaluation of Table 5.9.1D Overseer plan change options

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
Cost of plan change	- Additional cost, but if wide support cost of making plan change will be minimised	+++ No cost	--- Significant additional cost would be incurred as this would involves a more comprehensive review

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
Resolve inequity of using OverseerFM estimate of N leaching	+++ Enables the right Overseer tool to be used	-- Mismatch between outputs from the 2 versions of Overseer	+++ Enables the best current tools to be used
Impact on actual N leaching	No difference to status quo	No difference to status quo	+++ Assume reduced N leaching when the best N management regime is in place
Impact on receiving environment	++ Assumes that once resource consents are in place, better practices will be adopted	++ Assumes that once resource consents are in place, better practices will be adopted	+++ Assumes that the best regime will deliver the best outcome
Timeliness of change for consenting	+++ A simple technical fix will inform current consenting process	No impact as no change is being made	--- Review will not be completed within current consent round
Impact on efficiency of consenting	+++ One tool is used by all parties	--- Some parties may try to use Overseer v5.4.3	--- Inefficient as any change will not be able to be used in this round of consenting
Impact on consent activity status	+++ Clear & consistent activity status in line with the when the Tukituki plan change was made operative in 2015	-- Using OverseerFM more consents will be assessed as non-complying activities A few more will need to apply for consent	Not applicable to current consent round
Impact on certainty of consent outcome	++ With fewer consents assessed as non-complying, there is more certainty of being able to gain consent	--- The higher threshold for granting non-complying activity consent (s104D) means there is greater uncertainty of gaining these consents	Not applicable to current consent round
Impact on plan change programme giving effect to NPSFM	- or --- Minimal impact if there is full support for making this change Significant diversion of resources if there is opposition to making the technical fix, especially any appeal should eventuate	No impact on NPSFM plan change programme	--- Isolating out a review for the Tukituki Catchment only will create a significant diversion of resources from the NPSFM plan change programme. Note that this matter will still be reviewed, but on a regional basis
Impact on tangata whenua/mana whenua	No impact as this is a technical fix only	No impact as there is no change to the current situation	? Unknown, as this will depend on work that has not been done yet
Impact on wider community	No impact as this is a technical fix only	No impact as there is no change to the current situation	? Unknown, as this will depend on work that has not been done yet
Impact on economic activity/employment	++ Enables consents to be obtained using clear currently available tools	--- Possible confusion as to which version to use Delays & extra costs in preparing more detail for non-complying consent applications	? Unknown, as this will depend on how land users react to delays & risks around any change to the consenting environment

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
Risk	<p>The main risks are around being able to undertake the plan change quickly so that it can be used for the current consent round.</p> <p>If there is significant opposition (noting that pre-notification consultation may not identify all concerns) and if there is any appeal to the Environment Court, costs of proceeding would exceed any benefit derived.</p> <p>If reforms to the RMA include the new freshwater planning process, there will be significant delay and complexity in establishing the new hearing and deliberation process using freshwater commissioners</p> <p>Although the drought and COVID 19 pandemic are important in terms of impacts on economic and social wellbeing of Tūkituki residents, they are not clearly linked to the solution sought by making the technical fix</p>	<p>The reduced certainty of outcome and likely higher cost for non-complying applications</p> <p>The risk of applications using different versions of Overseer (back door access to v5.4.3) confusing science modelling for allocation of N to consents within a sub-catchment</p> <p>The risk of consent appeal relating to the version of Overseer applied to the consent & for the catchment</p> <p>The risk that some land users will delay supplying, or refuse to supply, data because of the original tool (v5.4.3) not being available</p>	<p>The use of Overseer in regulation is still under debate nationally.</p> <p>The best use for Overseer in regulation is still unknown</p> <p>HBRC would replicate work being done nationally & could land in a different space to any future national direction</p>
Efficiency	<p>Efficient if the change can be undertaken as quickly as possible:</p> <ul style="list-style-type: none"> It does not use the proposed freshwater planning process, which may still come into effect from mid-2020 There is no significant opposition and no appeals (as gauged through consultation & submission making activities) 	<p>Inefficient in that 2 ways of estimating N leaching, with quite different results from the same inputs</p> <p>Leads to confusion & duplication of effort to standardise all N leaching information in order to be able to allocate fairly & transparently</p>	<p>Not efficient to address the current consent round as the delay in notification of a proposal would be too long – possibly at least a year away</p>
Effectiveness	<p>Effective in that:</p> <ul style="list-style-type: none"> All consent applications use the current and only available tool N consent allocations can be made from one common method for estimating N leaching 	<p>Less effective if land users do not supply N leaching data at the same time, resulting in delay in calculating catchment N loads</p>	<p>Ineffective in addressing the current round of consents</p> <p>Effective in the longer term, for re-consenting in future</p>

Preferred Option

23. On the basis of the above evaluation, staff recommend the first option, recalibrating Table 5.9.1D using OverseerFM, the currently available tool for estimating nitrogen leaching. This will enable:

- 23.1. Consent activity status thresholds to be retained between the old and current versions of Overseer (the numbers of restricted discretionary and non-complying consent applications would be similar to that provided for when in 2015)
- 23.2. Use of the most up to date tool, OverseerFM for the current round of consent applications
- 23.3. Clear and consistent use of the only publicly available version, OverseerFM, enabling more efficient consent processing.
- 24. Staff note the risks arising from any significant lack of support for the technical fix, and the likely changes to freshwater plan-making processes, which are due to be announced ahead of the 3 June RPC meeting. These are addressed in the following section, Next Steps.
- 25. Staff note that this technical fix is specifically intended to address only the issue of the change in tool being available for estimating Nitrogen leaching in terms of Table 5.9.1D for the Tukituki Catchment. It does not address a wider review of the use of Overseer in regulation (described as Option 3, above), which would otherwise occur as part of any review of plan provisions.

Pre-notification consultation

- 26. For the technical fix to be effective, the plan change needs to have good support from the wider community and to be notified in sufficient time to be used for the current round of consent applications for nitrogen leaching in the Tukituki Catchment.
- 27. Accordingly, staff have now initiated consultation in terms of clause 3 Schedule 1 RMA, and in line with their delegations. Staff are consulting with the following people and entities:
 - 27.1. The Minister for the Environment
 - 27.2. The Minister of Conservation
 - 27.3. The Minister for Primary Industries
 - 27.4. Relevant local authorities (Central Hawke's Bay District Council, Hastings District Council, Horizons Regional Council)
 - 27.5. Iwi authorities of the Tukituki Catchment
 - 27.6. Regional farming representative organisations (e.g. Federated Farmers, Beef and Lamb, Dairy NZ)
 - 27.7. Tukituki Leaders Forum.
- 28. A copy of the pre-notification consultation letter is attached as Appendix B, which includes the possible change to Table 5.9.1D as well as the summary evaluation provided at paragraph 23, above.

Next Steps

- 29. Staff will provide a supplementary report to the RPC on feedback received on the pre-notification proposal by the end of this month (May 2020). The section 32 Evaluation Report (Appendix A) will be updated accordingly. If there is significant opposition to the technical fix, such that it is likely to generate appeal to the Environment Court, then the RPC will need to carefully consider whether or not to proceed to notification.
- 30. The RPC's recommendation will go forward to the 24 June Council meeting. Should the RPC recommend a plan change, and Council resolve accordingly, the proposal could then be notified on Saturday 27 June. This should be ahead of any reform to the RMA coming into effect. Should the RPC recommend abandoning the plan change in light of feedback received, then all those invited to provide feedback will be informed accordingly.
- 31. At the time of writing this report, the government has not yet released their decisions on RMA reforms for freshwater planning which were originally signalled to be out by mid-2020.

32. Appendix C shows the proposed plan change to Table 5.9.1D, as it stands prior to receiving feedback.

Strategic Fit

33. The proposed plan change gives effect to Strategic Outcome 1: Water quality, safety and security. It recognises the change to the strategic driver: technology, data and information.

Significance and Engagement Policy Assessment

34. The RMA requires pre-notification consultation is undertaken with those organisations identified in clause 3 Schedule 1, and then prescribes the plan notification and submission-making processes in subsequent clauses of Schedule 1.
35. In terms of Council's Significance and Engagement Policy, this matter is not significant.

Climate Change Considerations

36. The proposed plan change does not directly impact on climate change. However, the actions that land users take within the Tukituki Catchment, in giving effect to any required new consents, will contribute cumulatively to climate change mitigation and adaptation.

Considerations of Tangata Whenua

37. The RPC have already considered tangata whenua impacts of this proposed change generally, at the March 2020 RPC meeting when they resolved to proceed with initiating a plan change to recalibrate Table 5.9.1D.
38. Iwi authorities and marae within the Tukituki catchment are being consulted at the moment in terms of the proposal. Their feedback and any proposed response will be specifically addressed in the supplementary report.

Financial and Resource Implications

39. No specific budget has been assigned in the Annual Plan for this project.
40. By taking a 'fast failure' approach to testing support for the technical fix, it is envisaged that plan development costs will be minimised and can be covered through internal reallocation of staff and other resources.

Consultation

41. Consultation is currently being undertaken with people and entities interested, as required by clause 3 Schedule 1 RMA.
42. Should the proposal be notified, the RMA sets the submission and hearing process in Schedule 1 RMA.

Decision Making Process

43. 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:
- 43.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 43.2. The use of the special consultative procedure is not prescribed by legislation.
 - 43.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 43.4. The persons affected by this decision are those people and entities with an interest in freshwater management within the Tukituki Catchment.
 - 43.5. The decision is not inconsistent with an existing policy or plan.
 - 43.6. The Council must use the plan making processes prescribed in Schedule 1 RMA. The usual Part 1 process for plan making is recommended, given the need to

notify ahead of any reform to the RMA, and given that the benefits of this proposal will only be achieved if there is good community-wide support.

Recommendations

That the Regional Planning Committee:

1. Receives and considers the staff report on *Proposed Plan Change 6A: Tukituki Catchment – Table 5.9.1D*.
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 or persons likely to have an interest in the decision.

Either:

3. Approves:
 - 3.1. Proposed Plan Change 6A Tukituki Catchment – Table 5.9.1D for notification in terms of clause 5 Schedule 1 Resource Management Act 1991
 - 3.2. The associated report, *Section 32 Evaluation of proposed plan change 6A Tukituki catchment - Table 5.9.1D*, and
 - 3.3. Notifies the proposed plan change and calls for submissions on Saturday 27 June 2020.

Or

- 3.4. Abandons the Table 5.9.1D plan change proposal, and requests staff inform all those who replied feedback on the consultation draft accordingly.

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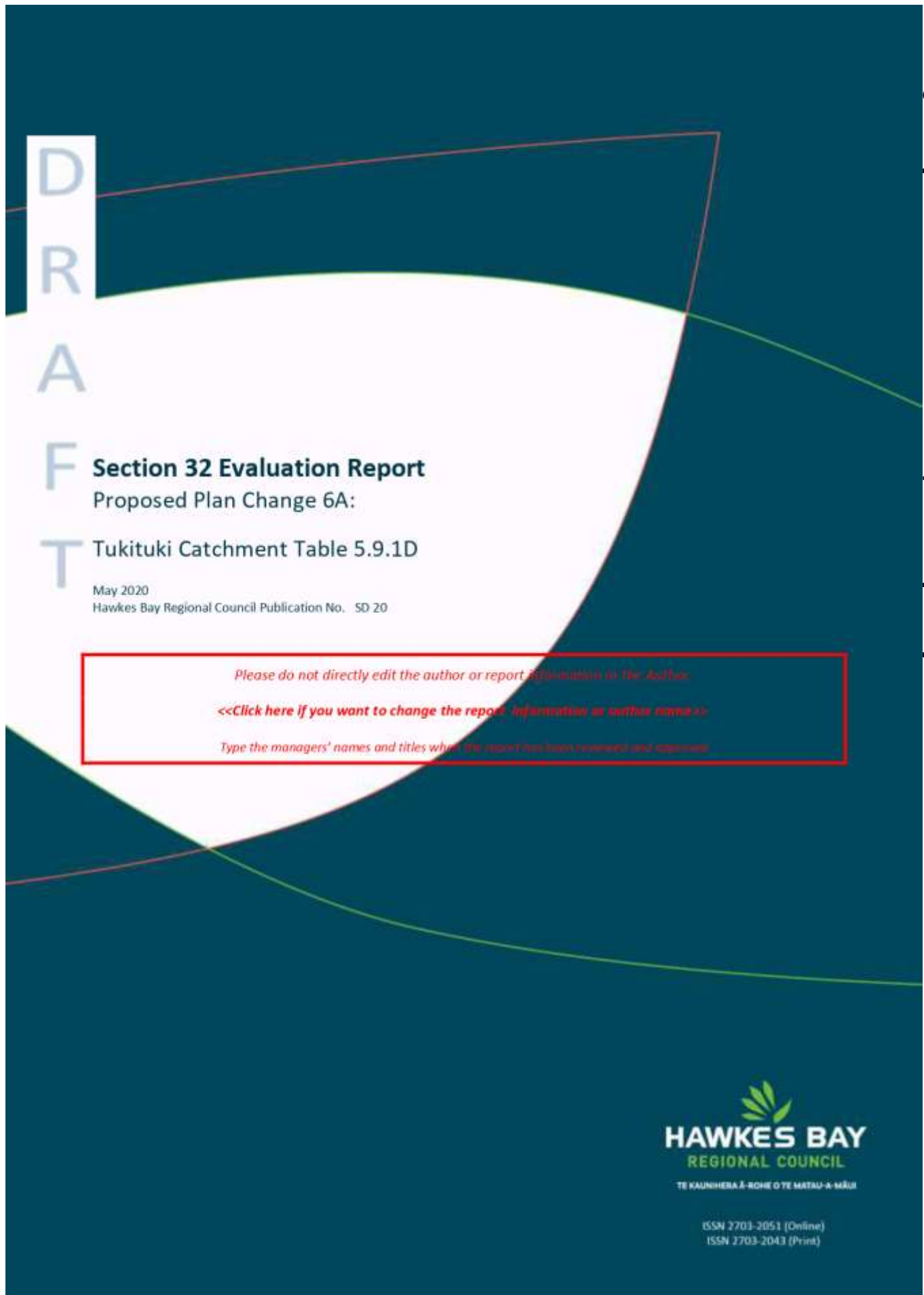
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Attachment/s

- [1](#) Section 32 Evaluation Report Draft Proposed Plan Change 6A (Tukituki Catchment Table)
- [2](#) Pre-notification letter template Tukituki Catchment PC6A - 18 May 2020
- [3](#) Notification Draft Plan Change 6A Tukituki Catchment Overseer Table 5.9.1D - May 2020



Attachment 1

Item 9

Version



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DRAFT

Policy and Planning

Section 32 Evaluation Report Proposed Plan Change 6A: Tukituki Catchment Table 5.9.1D

May 2020
Hawkes Bay Regional Council Publication No. SD 20

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Version

Item 9

Attachment 1

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Version

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Executive summary

1. This report evaluates a proposed change to the Hawke's Bay Regional Resource Management Plan with respect to nitrogen leaching thresholds set in *Table 5.9.1D: Tukituki LUC Natural Capital Nitrogen Leaching Rates* for the Tukituki Catchment.
2. Nitrogen leaching off farm is estimated using Overseer, which was first considered for regulatory use in the Tukituki Catchment in 2012. Since then the model has had numerous updates. OverseerFM is the latest and only version publicly available. However, it generates quite different leaching estimates to the version used for the Tukituki Catchment, when that catchment plan change was made operative in 2015.
3. While the tool to estimate leaching makes no difference to the amount of nitrogen that actually leaches into freshwater, it does impact on how the rules apply. In particular, the farm leaching estimate is one determinant of whether or not resource consent is required, and if consent is required, whether it will be assessed as a restricted discretionary or non-complying activity.
4. The purpose of this proposed plan change is to ensure that Table 5.9.1D remains 'fit for now' and enables use of the best available science for allocating nitrogen fairly across catchment consents.
5. The purpose of this report is to evaluate how best to achieve this, considering three options ranging from doing nothing, recalibrating Table 5.9.1D or reviewing how nitrogen is managed more broadly.
6. The option preferred is to recalibrate Table 5.9.1D. This will ensure Overseer FM is used in a clear, consistent and efficient way to estimate nitrogen leaching within the Tukituki Catchment when assessing the current round of resource consent applications. It will ensure that both HBRC and applicants are using the same tool, minimising any inconsistency or ambiguity.
7. The report notes that this 'fit for now' proposed plan change is to address the immediate issue arising for consenting now and does not purport to be a more comprehensive or enduring change. Such a change would be the subject of a future proposal arising from a more comprehensive review of plan provision for nitrogen management.
8. This report also summarises the consultation undertaken so far in preparing the proposal and summarises what changes have been made (if any) in the light of feedback from tāngata whenua through the relevant iwi authorities.

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1 Introduction

Overview

9. This report sets out a summary of the evaluation behind Hawke's Bay Regional Council's (HBRC) decision to notify a proposed change to *Table 5.9.1D: Tukituki LUC Natural Capital Nitrogen Leaching Rates* which is within the Tukituki Catchment section of the Regional Resource Management Plan (RRMP).
10. The proposed change updates Table 5.9.1D using OverseerFM, the current and only version of Overseer, a tool for estimating nitrogen leaching. This table sets thresholds for Nitrogen leaching within the Tukituki Catchment based on the Land Use Capability system. The table determines the activity status of nitrogen (N) leaching from farming (i.e whether N leaching is assessed as a permitted, restricted discretionary or non-complying activity).

Objective of proposed plan change

11. The objective of the proposed plan change is to ensure that Table 5.9.1D remains 'fit for now' and ensures that the best available science is used for allocating nitrogen fairly across catchment consents.

Purpose of this report

12. This report evaluates the proposed change to Table 5.9.1D, considering reasonable options and assessing the benefits, costs, risks, efficiencies and effectiveness of each option prior to making a recommendation on 'the most appropriate' way to address the issue of version changes to Overseer, the tool for estimating nitrogen leaching from farming activities.
13. It has been prepared to meet the requirements of Section 32 of the Resource Management Act 1991 (RMA) and sets out all of the information available to HBRC to determine whether the proposed plan change is 'the most appropriate' to achieve the purpose of the RMA, the objectives of the plan change and the National Policy Statement for Freshwater Management (NPS-FM).
14. The level of detail in this report corresponds to the scale and significance of effects anticipated from implementation of this proposed plan change.
15. Appendix 1 sets out more details on the requirements of a Section 32 Evaluation Report.

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2 The proposed plan change: options and evaluation

Background

16. Since 2015, when Plan Change 6 to the Tukituki Catchment was adopted, HBRC has been working with the Tukituki rural community to better manage freshwater within the catchment.
17. Positive actions have already been taken by farmers, including preparing Farm Environmental Management Plans (FEMPs) and starting to give these FEMPs effect through a range of practices, including by improved fertiliser, stock and riparian management. Now, those farmers that need to gain consent for nitrogen leaching have been requested to pre-register their consent applications by 31 May 2020.
- Issue**
18. One issue that has emerged as farmers prepare to lodge their consent applications relates to the use of Overseer to estimate farm nitrogen leaching. Late in 2019 Federated Farmers raised their concern that as Overseer has been further refined and developed, the information on which Table 5.9.1D was originally based is well out-dated. They considered it would be sensible, more acceptable and practical to use nitrogen leaching numbers generated consistently using only the most recent version of Overseer (OverseerFM).
19. Overseer v5.4.3 was used back in 2012 to draft an initial table on nitrogen leaching for the Tukituki Catchment. There have been numerous changes to Overseer since then, reflecting scientists' better understanding of how nitrogen moves through soil. OverseerFM is now the only available version of this tool. As a result of better scientific understanding, it typically estimates higher rates of Nitrogen leaching than version 5.4.3. This higher leaching estimate does not result in higher amounts of nitrogen entering freshwater: rather, it reflects better knowledge of how much nitrogen leaches below the root zone. Not all leached nitrogen discharges into receiving water. Some nitrogen is attenuated (i.e. 'removed') between the root zone and receiving water due to natural processes. Table 5.9.1D sets out various thresholds for nitrogen leaching based on the Land Use Capability class of the land. These thresholds determine whether a consent will be processed as a restricted discretionary or a non-complying activity. Non-complying activities must pass a more stringent test under the RMA for consent to be granted: consent preparation costs are higher and the outcome is less certain. With nitrogen leaching estimates using OverseerFM generating higher numbers than Overseer v5.4.3, more consent applications than originally envisaged back in 2015 are likely to be assessed as non-complying activities. This was not the intention of the Tukituki Board of Inquiry (BOI) as confirmed in its decision on Plan Change 6, when it noted: A plan change is necessary to recalibrate Table 5.9.1D to address these matters and ensure that the best available science is used for allocating nitrogen fairly across catchment consents.
- Plan change objective**
24. A clear and consistent tool is used for estimating nitrogen leaching from farming activities within the Tukituki Catchment, as envisioned in the original 2015 Tukituki Catchment plan change.

Origins of Table 5.9.1D

25. Staff have undertaken further research on the origins of Table 5.9.1D, to better understand what farm system information was used in estimating nitrogen leaching with Overseer v5.4.3. This was to ensure that the same information would be used in re-estimating nitrogen leaching using OverseerFM. In 2012, the 'natural capital' approach was first investigated as a potential approach for managing Nitrogen at a farm scale for the Tukituki Catchment Plan in the Benson Report, *Nutrient Management Approaches for the Tukituki Catchment*.

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27. In the report a Land Use Capability (LUC) based Nitrogen loss table was created. It saw allowable leaching rates varying spatially across the landscape, with the spatial variation being linked to the underlying LUC. Overseer nutrient modelling software was used to determine a Nitrogen leaching limit for each LUC.
28. The approach was initially developed by Dr Alec McKay for the Manawatu-Whanganui Regional Council (Horizons) and has been used in their One Plan since it became operative in 2013. The following rationale was given for using this approach:

Of the approaches listed, allocating the nutrient loss limit based on the natural capital of the soil in the catchment offered a basis for developing policy that is linked directly to the underlying natural biophysical processes in the catchment. It is independent of current land use and places no restrictions on future land-use options. It also provides all land users in the catchment with certainty by defining a nutrient loss limit based on the suite of soils they own, beyond this resource consent would be required and that includes a nutrient budget and mitigation strategy.

<http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/Defining-nutrient-nitrogen-loss-limits-within-a-water-management-zone-on-the-basis-of-the-natural-capital-of-soil.pdf?ext=.pdf> (Executive Summary, page 2) Using this approach, the following table was developed for the Tukituki Catchment:

Table 1: LUC Nitrogen Leaching Rates

LUC Class	I	II	III	IV	V	VI	VII	VIII
Rate (Kg/ha/year)	30.1	27.1	24.8	20.7	20	17	11.6	3

30. It was not included in the originally notified proposed Tukituki Catchment Plan Change 6 in 2012. Instead, it was inserted as Table 5.9.1D through the BOI process in 2015. In their decision, the BOI noted that: *A LUC approach for the Tukituki Catchment would be consistent with the approach in the One Plan.*

<https://www.epa.govt.nz/assets/FileAPI/proposal/NSP000028/Boards-Decision/7f5aeb17f4/Report-and-Decisions-Volume-1-of-3-Report-18-June.pdf> (paragraph 417, page 135).

31. It is important to note neither the original 2012 natural capital approach, nor the subsequently used Table 5.9.1D, directly link the nitrogen leaching estimates with the nitrogen limits and targets set for surface water (in Table 5.9.1B) and groundwater (in Table 5.9.2) within the Tukituki Catchment. In other words, reaching compliance with Table 5.9.1D (i.e. as a permitted activity) would not ensure nitrogen targets for the Tukituki are achieved. The LUC leaching approach was a new and novel approach at the time, which has since met much scrutiny over its lack of relationship with Nitrogen loads in river, for example through the Waikato and Bay of Plenty Regional Councils' recent plan changes which consider nitrogen leaching. For Waikato's proposed plan change, the hearings panel made the following comments, which equally apply to the Tukituki Catchment, where Table 5.9.1D sets the activity status for farming activities and nitrogen leaching, and does not set hard limits:

The downside of specifying N leaching numbers is that those numbers have been identified using a version of Overseer that has now been superseded by OverseerFM, and that means that there will be something of a mismatch between future modelled N leaching numbers and the trigger values we recommend. However, we will address that to some extent by the policies we will

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recommend, and the significance of any mismatch is reduced by the fact that the significance of the nominated values is that they determine consent status, rather than acting as hard limits.

<https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/Volume-1-Hearings-Panel-Recommendations.pdf> (paragraph 696, page 160)

34. For all three regional councils (Horizons, Waikato and Bay of Plenty), the plan changes that each has proposed recently go beyond recalibration of nitrogen leaching figures to reflect the impact of upgraded versions of Overseer. Each proposal is at a varying stage of decision-making or appeal: none are yet operative.

Recalibrating Table 5.9.1D

35. Table 5.9.1D can be recalibrated using the latest version of Overseer to enable the relative consenting activity status thresholds to be retained between the use of Overseer v5.4.3 and Overseer FM. Horizons used Massey University to undertake this work. The reports associated with the recalibration are below:

[http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-\(Part-A-and-B\)-January-2018.pdf?ext=.pdf](http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-(Part-A-and-B)-January-2018.pdf?ext=.pdf)

[http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-\(Part-C\)-July-2018.pdf?ext=.pdf](http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-(Part-C)-July-2018.pdf?ext=.pdf)

37. The BOI stated that the approach used for the Tukituki Catchment was comparable but not identical to Manawatu-Whanganui (BOI (2014) paragraph 417, page 135). Dr James Hanly of Massey University has stated:

In my professional opinion, from recalibrating Horizons LUC table, HBRC's would result in a very similar if not the same percentage change to the LUC classes, if the case study farm used was similar (Hanly, pers comm, 2020).

39. By basing the recalibration of Table 5.9.1D on the Horizons work, then it may be updated using the same percentage changes. The table below applies the percentage increases determined for Horizons to Table 5.9.1D

Table 2: Recalibration of Table 5.9.1D

	LUC I	LUC II	LUC III	LUC IV	LUC V	LUC VI	LUC VII	LUC VIII
Original (v 5.4.3) kgN/ha/ year	30.1	27.1	24.8	20.7	20	17	11.6	3
Revised kgN/ha/ year	50.9	45.3	41.7	33.8	31.3	27	16.4	4.5
Change	69.0%	67.0%	68.3%	63.3%	56.3%	58.7%	41.3%	50.0%

Preliminary social and economic impact assessment

41. In early March 2020, Federated Farmers of New Zealand provided a preliminary social and impact assessment relating to the use of Overseer in Table 5.9.1D. Some of the key matters raised in that evaluation included:

- 41.1 When considering the Overseer model and version change, the consistent advice or recommendations are:

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- a) *The latest version of Overseer should be 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.*

(Federated Farmers (2020) paragraph 7)

- 41.2 *These costs (of N mitigation measures on farm) 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." By contrast, currently 64 farms are more than 30% above the LUC table, and 48 are less than 30% above the LUC table.*

(Federated Farmers (2020) paragraph 9)

- 41.3 The additional costs of applying for a non-complying resource consent (for those farms more than 30% over the relevant N leaching rate in Table 5.9.1D, the LUC table) are described at Federated Farmers (2020) paragraph 20. These costs arise from the higher standard of evidence required to demonstrate that the consent proposal is consistent with the objectives and policies of the plan (as required by Section 104D RMA)
- 41.4 *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.*

(Federated Farmers (2020) paragraph 26)

42. A full copy of their preliminary assessment is attached at Appendix D.

Options

43. Three main options have been considered to address the issue arising in Table 5.9.1D from the use of Overseer in estimating nitrogen leaching, as follows:

- 43.1 Option 1: Recalibrate Table 5.9.1D using OverseerFM on the same farm systems assessed under Overseer v5.4.3

In the first option, the RMA still requires a plan change to be made when any technical material is updated. Table 5.9.1D was generated using Overseer v5.4.3, which is outdated and no longer

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available. This change generates the leaching rates from the same farm systems using OverseerFM, the most up to date and only available version of Overseer.

43.2 Option 2: Do not proceed with the plan change to recalibrate Table 5.9.1D

No change is made to the plan with the second option. In practice, OverseerFM would be used to estimate nitrogen leaching in the absence of any other available tool. The mis-match of estimates generated by the two versions would not be addressed through the plan. Rather, the resource consent process would somehow need to accommodate the differences.

43.3 Option 3: Undertake a comprehensive review of how best to estimate nitrogen leaching

The third option recognises that there are existing issues in the use of Overseer as a tool for regulating nitrogen leaching (for example, the Parliamentary Commissioner for the Environment in his 2018 report *Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways*). This change would involve a comprehensive review of how best to estimate and manage nitrogen leaching. Accordingly, it would take much longer to prepare.

Evaluation of options

44. The table below provides a summarised evaluation of each option, in accordance with Section 32 RMA. This table will be revised in the light of feedback received through pre-notification consultation.

Table 3: Summary s32 evaluation of Table 5.9.1D Overseer plan change options

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
Cost of plan change	- Additional cost, but if wide support cost of making plan change will be minimised	+++ No cost	--- Significant additional cost would be incurred as this would involve a more comprehensive review
Resolve inequity of using OverseerFM estimate of N leaching	+++ Enables the right Overseer tool to be used	-- Mismatch between outputs from the 2 versions of Overseer	+++ Enables the best current tools to be used
Impact on actual N leaching	No difference to status quo	No difference to status quo	+++ Assume reduced N leaching when the best regime is in place
Impact on receiving environment	++ Assumes that once resource consents are in place, better	++ Assumes that once resource consents are in place, better	+++ Assumes that the best regime will

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Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
	practices will be adopted	practices will be adopted	deliver the best outcome
Timeliness of change for consenting	+++ A simple technical fix will inform current consenting process	No impact as no change is being made	--- Review will not be completed within current consent round
Impact on efficiency of consenting	+++ One tool is used by all parties	--- Some parties may try to use Overseer v5.4.3	--- Inefficient as any change will not be able to be used in this round of consenting
Impact on consent activity status	+++ Clear & consistent activity status as envisioned when Tukituki plan change was made operative in 2015	-- Using OverseerFM more consents will be assessed as non-complying activities A few more will need to apply for consent	Not applicable to current consent round
Impact on certainty of consent outcome	++ With fewer consents assessed as non-complying, there is more certainty of being able to gain consent	--- The higher threshold for granting non-complying activity consent (s104D) means there is greater uncertainty of gaining these consents	Not applicable to current consent round
Impact on plan change programme giving effect to NPSFM	- or --- Minimal impact if there is full support for making this change Significant diversion of resources if there is opposition to making the technical fix, especially if any appeal should eventuate	No impact on NPSFM plan change programme	--- Isolating out a review for the Tukituki Catchment only will create a significant diversion of resources from the NPSFM plan change programme. Note that this matter will still be reviewed, but on a regional basis

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Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
	Any future change to Overseer will still require another plan change - this is a 'fit for now' fix and is not 'fit for future'		
Impact on tangata whenua/mana whenua	No impact as this is a technical fix only	No impact as there is no change to the current situation	? Unknown, as this will depend on work that has not been done yet
Impact on wider community	No impact as this is a technical fix only	No impact as there is no change to the current situation	? Unknown, as this will depend on work that has not been done yet
Impact on economic activity/employment	++ Enables consents to be obtained using clear currently available tools	--- Delays & extra costs in preparing more detail for non-complying consent applications	? Unknown, as this will depend on how land users react to delays & risks around any change to the consenting environment
Risk	The main risks are around being able to undertake the plan change quickly so that it can be used for the current consent round. If there is significant opposition (noting that pre-notification consultation may not identify all concerns), and if there is any appeal to the Environment Court, costs of proceeding would exceed any benefit derived.	The reduced certainty of outcome and likely higher cost for non-complying applications The risk of applications using different versions of Overseer (back door access to v5.4.3) confusing science modelling for allocation of N to consents within a sub-catchment The risk of consent appeal relating to the version of Overseer	The use of Overseer in regulation is still under debate nationally. The best use for Overseer in regulation is still unknown HBRC would replicate work being done nationally & could land in a different space to any future national direction

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Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
	<p>If there are further changes made to Overseer, the version problem must still be addressed.</p> <p>If reforms to the RMA include the new freshwater planning process, there will be significant delay and complexity in establishing the new hearing and deliberation process using freshwater commissioners</p> <p>Although the drought and COVID 19 pandemic are important in terms of impacts on economic and social wellbeing of Tukituki residents, they are not clearly linked to the solution sought by making the technical fix</p>	<p>applied to the consent & for the catchment</p> <p>The risk that some land users will delay supplying, or refuse to supply, data because of the original tool (v5.4.3) not being available</p>	
Efficiency	<p>Efficient if the change can be undertaken as quickly as possible:</p> <ul style="list-style-type: none"> It does not use the proposed freshwater planning process There is no significant opposition and no appeals 	<p>Inefficient in that two ways of estimating N leaching, with quite different results from the same inputs</p> <p>Leads to confusion & duplication of effort to standardise all N leaching information in order to be able to allocate fairly & transparently</p>	<p>Not efficient to address the current consent round as the delay in notification of a proposal would be too long – possibly at least a year away</p>
Effectiveness	<p>Effective in that:</p> <ul style="list-style-type: none"> all consent applications use the current and only available tool 	<p>Less effective if land users do not supply N leaching data at the same time, resulting in delay in calculating catchment N loads</p>	<p>Ineffective in addressing the current round of consents</p>

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Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
	<ul style="list-style-type: none"> N consent allocations can be made from one common method for estimating N leaching 		Effective in the longer term, for re-consenting in future

Preferred option

45. On the basis of the above evaluation, the first option is preferred, recalibrating Table 5.9.1D using OverseerFM, the currently available tool for estimating nitrogen leaching. This will enable:
- 45.1 Consent activity status thresholds to be retained between the old and current versions of Overseer (the numbers of restricted discretionary and non-complying consent applications would be similar to that which applied in 2015)
- 45.2 Use of the most up to date tool, OverseerFM for the current round of consent applications
- 45.3 Clear and consistent use of the only publicly available version, OverseerFM, enabling more efficient consent processing.

[Review in light of pre-notification feedback]

Risk of preferred option and mitigation

46. If there is a significant lack of support for the technical fix, such that an appeal to the Environment Court is highly likely, then the benefit of being able to use only OverseerFM for the current round of consents will be lost. Although pre-notification consultation is expected to identify the nature of any opposition to the proposal, further issues may be uncovered through the submission and hearing processes. That possibility is inherent for any proposed change to a plan.
47. If the proposed plan change notification is delayed until reforms to freshwater management plan making processes come into effect, there will be delays in working through a novel plan-making approach, even for a technical fix such as this proposal. The benefits of being able to use only OverseerFM for the current round of consents will be lost. Notification as soon as possible will minimise this risk.
48. If the plan change is not made, the issue relating to use of the different versions of Overseer remains. Should the proposal not be notified (i.e. Option 2 Make No Change prevails) then the appropriate use of Overseer is likely to be a live issue for consenting, and a risk of appeal on a resource consent decision relating to this issue, remains a risk. If the version problem is not addressed now, it is highly likely it will have to be addressed later, with all the additional costs and delays inherent to any appeal to the Environment Court (for both the applicant and the Council).
49. The risk of future changes to Overseer remains. However, the objective of this proposed change is to enable the current version of Overseer to be used for the current round of nitrogen leaching consents for the Tukituki Catchment. This is better addressed through a more comprehensive review of plan provisions for nitrogen management.

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50. Regardless of whether or not this change is made, a wider review of the use of Overseer in regulation (described as Option 3, above) will occur at some later date, as part of the regular review of plan provisions, as required by section 79 of the RMA.

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3 Consultation

Pre-notification consultation

51. Pre-notification consultation, as required by clause 3 Schedule 1 RMA, was undertaken with some 50 people and organisations (listed in Appendix B) as follows:
 - 51.1 An email was sent to those being consulted on 18 May 2020, providing information on the proposal and requesting feedback, either by use of a simple online survey or by return email. Respondents were requested to provide their feedback by 29 May 2020.
 - 51.2 Responses will be collated and analysed, and a separate report on responses received will be tabled at the 3 June 2020 meeting of the RPC.
52. Responses were received from This section will be completed following the closure of pre-notification consultation feedback on 29 May 2020.
53. The issues raised. This section will be completed following the closure of pre-notification consultation feedback on 29 May 2020.
54. Response to the issues raised. This section will be completed following the closure of pre-notification consultation feedback on 29 May 2020.

Feedback from tāngata whenua

55. Tāngata whenua of the area who may be affected by the proposal were consulted through the relevant iwi authorities, as listed in Appendix B.
56. Responses were received from the following iwi authorities: This section will be completed following the closure of pre-notification consultation feedback on 29 May 2020.
57. The issues raised. This section will be completed following the closure of pre-notification consultation feedback on 29 May 2020.
58. Responses to the issues raised. This section will be completed following the closure of pre-notification consultation feedback on 29 May 2020.

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4 Glossary of abbreviations and terms

BOI	Tukituki Catchment Board of Inquiry
FEMP	Farm Environment Management Plan
ha	hectare
HBRC	Hawke's Bay Regional Council
Horizons	Manawatu-Whanganui Regional Council
LUC	Land Use Capability
N	Nitrogen
NPS-FM	National Policy Statement for Freshwater Management
One Plan	Regional Plan for Manawatu - Whanganui Regional Council
RMA	Resource Management Act 1991
RRMP	Hawke's Bay Regional Resource Management Plan

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5 References

Hawke's Bay Reports

Regional Planning Committee (18 March 2020) Agenda and Minutes, recommending preparation of a plan change to recalibrate Table 5.9.1D:

http://hawkesbay.infocouncil.biz/Open/2020/03/RPC_18032020_AGN_AT_EXTRA.PDF

http://hawkesbay.infocouncil.biz/Open/2020/03/RPC_18032020_MIN_EXTRA.PDF

Tukituki Catchment Board of Inquiry (2014). In this decision report, the main discussion on managing nitrogen is covered at paragraphs 374 – 491 (pages 123 - 153):

<https://www.epa.govt.nz/assets/FileAPI/proposal/NSP000028/Boards-Decision/7f5aeb17f4/Report-and-Decisions-Volume-1-of-3-Report-18-June.pdf>

Benson Report (2012). The Tukituki Catchment Board of Inquiry, above, makes numerous references to the Benson Report, which looks at different approaches considered by HBRC for managing nitrogen within the Tukituki Catchment. The final draft report that was used by the BOI is attached:



Nutrient
Management Approach

Plan changes proposed by other regional councils

Bay of Plenty Regional Council: Proposed Plan Change 10: Lake Rotorua Nutrient Management (notified 2017, first part of Environment Court appeal decision released 2019). This link relates to the first decision of the Environment Court:

<https://atlas.boprc.govt.nz/api/v1/edms/document/A3334427/content>.

Horizons Regional Council Proposed Plan Change 2: Existing Intensive Farming Land Uses (notified 2019, hearing is pending). These links relate to the technical document supporting the proposed plan change (the first three links) and secondly, to the proposed plan change (the final link):

<http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/Defining-nutrient-nitrogen-loss-limits-within-a-water-management-zone-on-the-basis-of-the-natural-capital-of-soil.pdf?ext=.pdf>

[http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-\(Part-A-and-B\)-January-2018.pdf?ext=.pdf](http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-(Part-A-and-B)-January-2018.pdf?ext=.pdf)

[http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-\(Part-C\)-July-2018.pdf?ext=.pdf](http://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/FLRC-Revised-Table-14-2-Summary-Report-(Part-C)-July-2018.pdf?ext=.pdf)

<http://www.horizons.govt.nz/publications-feedback/one-plan-reviews-changes/plan-change-2>

Waikato Regional Council Proposed Plan Change 1: Waikato and Waipā River Catchments (notified 2016, variation 2018, decisions released April 2020). This link relates to the decisions of the Hearing Panel:

<https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/Volume-1-Hearings-Panel-Recommendations.pdf>

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Appendix A Section 32 RMA Evaluation Requirements

The relevant provisions of Section 32 RMA are set out below.

32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must—
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

....

- (4A) If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in [Schedule 1](#), the evaluation report must—
 - (a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of [Schedule 1](#); and
 - (b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.
- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
 - (a) as soon as practicable after the proposal is made (in the case of a standard, regulation, national policy statement, or New Zealand coastal policy statement); or
 - (b) at the same time as the proposal is notified.
- (6) In this section,—

objectives means,—
 - (a) for a proposal that contains or states objectives, those objectives;
 - (b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, national planning standard, regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means,—
 - (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change;
 - (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

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Appendix B Pre-notification consultation cl 3 Schedule 1 RMA

The following organisations were consulted with in preparing this proposed plan change, as required by clause 3, Schedule 1 RMA:

Ministers of the Crown:

- Environment, Primary Industries, Conservation

Local Authorities:

- Central Hawke's Bay District Council, Hastings District Council, Horizons Regional Council

Iwi Authorities:

- Ngāti Kahungunu Iwi Inc, Te Taiwhenua o Heretaunga, Te Taiwhenua o Tamatea, Heretaunga Tamatea Settlement Trust, Rangitāne Tū Mai Rā Trust, Rangitāne o Manawatū Settlement Trust, Taneuirangi Manawatū Incorporated, Rangitāne o Tāmaki nui a Rua, Rangitāne o Wairarapa

Stakeholders:

- National and regional offices of Fish and Game NZ, and the Royal Forest and Bird Society, Federated Farmers NZ, Horticulture NZ, Beef and Lamb, Dairy NZ, Fonterra, NZ Deer Farmers, Deer Industry NZ, Foundation of Arable Research, Hawke's Bay Wine Growers Association, Hawkes Bay Vegetable Growers, Ravensdown, Ballance

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Map 1: Tukituki River and Sub Catchments



Appendix D Social and Economic Impact Assessment

Federated Farmers of New Zealand provided the attached social and economic impact assessment relating to the use of Overseer for resource consenting in the Tukituki Catchment in March 2020.

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.

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>

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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, 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 be 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

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/21zYrGftGPHn6kmluy9qs/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/4IEqE1Oe5I223f1hbDmJsi/1b2fa72385d052f06abe5126765f24ac/Using_OVERSEER_in_Regulation.pdf

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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

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

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/715aeb1714/FINAL-Report-and-Decisions-Volume-1-of-3-Report-18-June.pdf>

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.

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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.

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

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/7f5aeb1714/FINAL_Report-and-Decisions-Volume-1-of-3-Report-18-June.pdf

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.

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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 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.

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>

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Attachment 1

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.
 - 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).

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>

18 May 2020

[Name]
[Address]
[Address1]
[TOWN & POSTCODE]



Dear [Name]

PROPOSED PLAN CHANGE: TUKITUKI CATCHMENT TABLE 5.9.1D

The Hawke's Bay Regional Council is seeking your feedback on a possible change to the regional plan. The Council is proposing to recalibrate Table 5.9.1D using OverseerFM, which is the tool currently available for estimating nitrogen leaching from farming activities.

Background

Since 2015, when Plan Change 6 to the Tukituki Catchment was adopted, Council has been working with the Tukituki rural community to better manage freshwater within the catchment.

Positive actions have already been taken by farmers, including preparing Farm Environmental Management Plans (FEMPs) and starting to give these FEMPs effect through a range of practices, including by improved fertiliser, stock and riparian management. Now, those farmers that need to gain consent for nitrogen leaching have been requested to pre-register their consent applications by the end of this month, 31 May 2020.

Issue

One issue that has emerged as farmers prepare to lodge their consent applications relates to the use of Overseer to estimate farm nitrogen leaching. Late in 2019 Federated Farmers raised their concern that as Overseer has been further refined and developed, the information on which Table 5.9.1D was originally based is well out-dated. They considered it would be sensible, more acceptable and practical to use nitrogen leaching numbers generated consistently using only the most recent version of Overseer.

Overseer v5.4.3 was used back in 2012 to draft an initial table on nitrogen leaching for the Tukituki Catchment. There have been numerous changes to Overseer since then, reflecting scientists' better understanding of how nitrogen moves through soil. OverseerFM is now the only available version of this tool, and typically it estimates higher rates of Nitrogen leaching than version 5.4.3. This higher leaching estimate does not result in higher amounts of nitrogen entering freshwater; rather, it reflects better knowledge of how much nitrogen leaches below the root zone. Not all leached nitrogen discharges into receiving water. Some nitrogen is attenuated (i.e. 'removed') between the root zone and receiving water due to natural processes.

Enhancing our **environment** together | Te whakapakari tahi i tō tātau **taiao**

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Table 5.9.1D sets out various thresholds for nitrogen leaching based on the Land Use Capability class of the land. These thresholds determine whether a consent will be processed as a restricted discretionary or a non-complying activity. Non-complying activities must pass a more stringent test under the RMA for consent to be granted: consent preparation costs are higher and the outcome is less certain. With nitrogen leaching estimates using OverseerFM generating higher numbers than Overseer v5.4.3, more consent applications than originally envisaged back in 2015 are likely to be assessed as non-complying activities. This was not the intention of the Tukituki Board of Inquiry as confirmed in its decision on Plan Change 6.

A plan change is necessary to recalibrate Table 5.9.1D to address these matters and ensure that the best available science is used for allocating nitrogen fairly across catchment consents.

Proposal

The Council is proposing to make a technical update to the nitrogen leaching thresholds in Table 5.9.1D, to recalibrate this table using the most up-to-date science i.e. OverseerFM. The recalibrated table could look like this:

DRAFT PROPOSAL: Table 5.9.1D: Tukituki LUC Natural Capital; Nitrogen Leaching Rates²⁹

LUC Class	I	II	III	IV	V	VI	VII	VIII
Rate (KgN/ha/year)	30.4 <u>50.9</u>	27.4 <u>45.3</u>	24.8 <u>41.7</u>	20.7 <u>33.8</u>	20 <u>31.3</u>	17 <u>27.0</u>	11.6 <u>16.4</u>	3 <u>4.5</u>

²⁹ These are calculated on a whole of farm property or whole of farming enterprise basis.

Evaluation of alternative options

A summary evaluation of alternative options to address this issue is included as Attachment 1, together with the recommendation for initiating this change.

Timeline

Council would like to notify this change as soon as possible, and preferably by the end of June 2020, in order to apply the recalibrated Table 5.9.1D to the current round of consent applications.

Feedback

We would like to receive your response to this draft of the proposed plan change by **Friday 29 May 2020**. To make it easier for you, would you please complete this online survey <https://www.surveymonkey.com/r/P8PV8YP>. Alternatively, please email me with your response, or contact me if you would like further information.

This consultation is undertaken in accordance with Clause 3 Schedule 1 RMA.

Yours sincerely

Dale Meredith

Senior Policy Planner

Strategic Planning Group

Phone: (027) 209 5264

Attachment 1

Table 5.9.1D Option Evaluation

The table below provides a summarised evaluation of each option, in accordance with Section 32 RMA. This table will be revised in the light of feedback received through pre-notification consultation.

Table 1: Summary s32 evaluation of Table 5.9.1D Overseer plan change options

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
Cost of plan change	- Additional cost, but if wide support cost of making plan change will be minimised	+++ No cost	--- Significant additional cost would be incurred as this would involve a more comprehensive review
Resolve inequity of using OverseerFM estimate of N leaching	+++ Enables the right Overseer tool to be used	-- Mismatch between outputs from the 2 versions of Overseer	+++ Enables the best current tools to be used
Impact on actual N leaching	No difference to status quo	No difference to status quo	+++ Assume reduced N leaching when the best regime is in place
Impact on receiving environment	++ Assumes that once resource consents are in place, better practices will be adopted	++ Assumes that once resource consents are in place, better practices will be adopted	+++ Assumes that the best regime will deliver the best outcome
Timeliness of change for consenting	+++ A simple technical fix will inform current consenting process	No impact as no change is being made	--- Review will not be completed within current consent round
Impact on efficiency of consenting	+++ One tool is used by all parties	--- Some parties may try to use Overseer v5.4.3	--- Inefficient as any change will not be able to be used in this round of consenting
Impact on consent activity status	+++ Clear & consistent activity status as envisioned when Tukituki plan change was made operative in 2015	-- Using OverseerFM more consents will be assessed as non-complying activities A few more will need to apply for consent	Not applicable to current consent round
Impact on certainty of consent outcome	++ With fewer consents assessed as non-complying, there is more certainty of being able to gain consent	--- The higher threshold for granting non-complying activity consent (s104D) means there is greater uncertainty of gaining these consents	Not applicable to current consent round
Impact on plan change programme giving effect to NPSFM	- or --- Minimal impact if there is full support for making this change Significant diversion of resources if there is opposition to making the technical fix	No impact on NPSFM plan change programme	--- Isolating out a review for the Tukituki Catchment only will create a significant diversion of resources from the NPSFM plan change programme.

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
			Note that this matter will still be reviewed, but on a regional basis
Impact on tangata whenua/mana whenua	No impact as this is a technical fix only	No impact as there is no change to the current situation	? Unknown, as this will depend on work that has not been done yet
Impact on wider community	No impact as this is a technical fix only	No impact as there is no change to the current situation	? Unknown, as this will depend on work that has not been done yet
Impact on economic activity/employment	++ Enables consents to be obtained using clear currently available tools	--- Possible confusion as to which version to use Delays & extra costs in preparing more detail for non-complying consent applications	? Unknown, as this will depend on how land users react to delays & risks around any change to the consenting environment
Risk	The main risks are around being able to undertake the plan change quickly so that it can be used for the current consent round. If there is significant opposition, including appeal to the Environment Court, costs of proceeding would exceed any benefit derived. If reforms to the RMA include the new freshwater planning process, there will be significant delay and complexity in establishing the new hearing and deliberation process using freshwater commissioners. Although the drought and COVID 19 pandemic are important in terms of impacts on economic and social wellbeing of Tukituki residents, they are not clearly linked to making the technical fix	The reduced certainty of outcome and likely higher cost for non-complying applications The risk of applications using different versions of Overseer (back door access to v5.4.3) confusing science modelling for allocation of N to consents within a sub-catchment The risk of consent appeal relating to the version of Overseer applied to the consent & for the catchment The risk that some land users will delay supplying, or refuse to supply, data because of the original tool (v5.4.3) not being available	The use of Overseer in regulation is still under debate nationally. The best use for Overseer in regulation is still unknown HBRC would replicate work being done nationally & could land in a different space to any future national direction
Efficiency	Efficient if the change can be undertaken as quickly as possible: <ul style="list-style-type: none">It does not use the proposed freshwater planning processThere is no significant opposition and no appeals	Inefficient in that 2 ways of estimating N leaching, with quite different results from the same inputs Leads to confusion & duplication of effort to standardise all N leaching information in order to be able to allocate fairly & transparently	Not efficient to address the current consent round as the delay in notification of a proposal would be too long – possibly at least a year away
Effectiveness	Effective in that all consent applications use the current tool and	Less effective if land users do not supply N leaching data at the same time,	Ineffective in addressing the current round of consents

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
	allocations can be made from one common method for estimating N leaching	resulting in delay in calculating catchment N loads	Effective in the longer term, for re-consenting in future

Preferred Option

1. On the basis of the above evaluation, staff recommend the first option, recalibrating Table 5.9.1D using OverseerFM, the currently available tool for estimating nitrogen leaching. This will enable:
 - 1.1. Consent activity status thresholds to be retained between the old and current versions of Overseer (the numbers of restricted discretionary and non-complying consent applications would be similar to that envisioned in 2015);
 - 1.2. Use of the most up to date tool, OverseerFM for the current round of consent applications;
 - 1.3. Clear and consistent use of the only publicly available version, OverseerFM, enabling more efficient consent processing.

ATTACHMENT 3

PROPOSED PLAN CHANGE 6A: TUKITUKI CATCHMENT - TABLE 5.9.1D
to the Hawke's Bay Regional Resource Management Plan

Amend Table 5.9.1D as follows:

Table 5.9.1D: Tukituki LUC Natural Capital; Nitrogen Leaching Rates²⁹

LUC Class:	I	II	III	IV	V	VI	VII	VIII
Rate (KgN/ha/year)	30.4	27.4	24.8	20.7	20	17	11.6	3
	<u>50.9</u>	<u>45.3</u>	<u>41.7</u>	<u>33.8</u>	<u>31.3</u>	<u>27.0</u>	<u>16.4</u>	<u>4.5</u>

²⁹ These are calculated on a whole of farm property or whole of farming enterprise basis.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: POLICY ON NOTIFICATION OF WATER BOTTLING RELATED CONSENT APPLICATIONS

Item 10

Reason for Report

1. This item seeks feedback from the Regional Planning Committee on the potential to change the policy requiring that any application relating to water bottling is publicly notified, as requested by the Regional Council.

Officers' Recommendations

2. Five options are proposed for the Committee to consider. This is one more than was provided in the 29 April report to Council. All options have risks but are intended to provide some relief to the public concerns with consenting water takes for bottling.
 - 2.1. *Council retain the current policy that directs staff to apply special circumstances to water bottling take consent applications.* This approach was adopted in 2016 with modification in 2017. This stopped applications but it is not without risk. The risks would include that an applicant could seek costs against the Council if they apply for a water bottling use, have their application notified and heard, are required to defend their application against arguments that are not relevant under RMA, and are ultimately successful in obtaining a resource consent that allows them to take and use water for water bottling purposes.
 - 2.2. *Council or delegated Councillors/ Commissioners could assume the notification decision making responsibility on a case by case basis.* If an application is to be notified, staff would then proceed to notify, process submissions and manage a hearing if required.
 - 2.3. *Initiate a Plan Change to introduce a rule that requires notification of "water bottling" activities.* This is the option that presents least risk but will take time to achieve. But note that this approach could have been incorporated into the TANK Plan change, but it was not.
 - 2.4. *Revert to the pre 2016 policy that leaves the discretion with staff to consider on a case by case basis.*
 - 2.5. *Retain the public notification policy while amending the definition of water bottling to allow a higher percentage content of water.* This could read "taking and using water for bottling in bottles, bladders or other containers for human consumption, where the water taken makes up at least 99 % content of the container". This would accommodate the variety of energy and other beverages that are being produced for the market without providing for pure drinking water bottling.

Executive Summary

3. The Council adopted a policy in 2016 that requires any water bottling proposal to be publicly notified.
4. Water bottling remains a contentious issue in the Hawke's Bay Region and across the country. A lot of the opposition to water bottling is based around concerns such as foreign ownership of the businesses; that the water is exported with little value added in NZ; or the associated use of plastic bottles and the environmental effects of their downstream use and disposal. These are not activities directly associated with the taking and use of the water at the site.
5. Apollo Foods have taken the opportunity to present to staff and Council on their concerns that their plans to expand their beverage product range will be more costly and potentially constrained by publicly notification of a change to their consent conditions.

They sought that Council review the current policy with their situation in mind. They are locally owned, they value add making beverages using local product, they are wanting to compete across the range of products with multi national competitors.

6. Apollo Foods are not seeking a new consent to take water nor are they seeking more water under their existing consent. They are asking for an amendment to their consent conditions to allow for a wider range of beverages in their product range.
7. This discussion affords Council the opportunity to review the policy on water bottling and in particular the requirement that water bottling includes where water taken makes up at least 90% of the content of the container.
8. There is no specific recommendation. Updated options similar to those presented in 2016 are provided for Council to consider.

Background

9. In December 2016 Council established a policy position that all takes for water bottling trigger special circumstances and therefore should be publicly notified by staff. This was amended and clarified further in May 2017.
10. Public notification of each application to take water for water bottling use would have allowed any person to submit on the application and could have led to a hearing of the application if the applicant or submitters wished to be heard. No one has applied for a resource consent to take water for water bottling use since this policy position was set.
11. The Council decided in December 2016 that:
 - 11.1. all takes for water bottling trigger special circumstances and therefore should be publicly notified by staff.
 - 11.2. for clarity, water bottling is defined as “taking and using water for bottling in bottles, bladders or other containers for human consumption where bore water makes up at least 90% of the content of the container”.
12. This was amended in May 2017 to provide clarification of the Council policy position by:
 - 12.1. Amending the definition of water bottling to read “taking and using water for bottling in bottles, bladders or other containers for human consumption, where the water taken makes up at least 90% content of the container”
 - 12.2. Amending the Hearings Committee Terms of Reference to include the delegations to hear and decide applications for lapse date extensions for water bottling resource consents
 - 12.3. Advising that all applications to change any of the conditions of a water take resource consent for water bottling will be publicly notified
 - 12.4. Advising that all applications to transfer a water bottling resource consent, in part or in full, from site to site will be publicly notified.
13. No applications have been lodged and therefore none have been notified since this policy position was established.
14. The ability to apply for new water from the Heretaunga Plains has changed since this policy was established. The results of the groundwater modelling work undertaken for TANK were reported to Council in August 2017. This work determined that the sustainable allocation limit for the groundwater resource was in the order of 90 million cubic meters per year. The exact volume of water allocated across the plains cannot be established as not all groundwater takes have annual volumes assigned to them but it is estimated that between 150 and 180 million cubic metres per year is allocated from the Heretaunga Plains groundwater resource. This is well in excess of the scientific recommendation and hence no more new water has been allocated since this was determined, with some exceptions.
15. There was a transition period that applied where applications in process or underway and invested in on the basis of advice given prior to this date, were processed and granted. Apollo Foods was in this group and was able to obtain their water permit at this

time. Their consent was issued in October 2017. Apollo Foods were aware of the policy position on water bottling and accepted that they would not seek to use the water for water bottling.

16. A condition and an advice note were included to document that the consent did not provide for the use of the water for water bottling purposes. These provided as follows:
 - 16.1. Condition 14. The consent holder shall undertake all operations in accordance with any drawings, specifications, statements of intent and other information supplied as part of the application for this resource consent. This includes (but is not limited to) the statement confirming that 'water bottling' will not occur under this consent (see Advice Note VI).
 - 16.2. Advice Note VI Water Bottling. The consent was issued on the basis of statements made in support of the application, including that water would not be taken and used for 'water bottling'. 'Water bottling' is currently defined by the Council as "taking and using water for bottling in bottles, bladders or other containers for human consumption where bore water makes up at least 90% of the content of the container". A change of consent conditions would be required to authorise any proposed 'water bottling' under this consent.
17. Also review conditions were included to allow for the review of the consent to ensure that it aligns with operative TANK plan provisions. An advice note was also included which explains that reductions or restrictions may occur as a result of the TANK plan change process.
18. As mentioned no applications have been lodged for water takes for or related to water bottling use. There have been a number of enquiries including one to relocate to a new location and transfer the water permit to this location. Staff interpretation of the Council policy was that this would have to be notified and on the basis of that advice the application was not proceeded with.
19. There is also the recent enquiry and discussion by Apollo Foods who would like to use some of their current allocation for water bottling purposes or for other beverages that are made up of more than 90 percent water.

The process prior to the 2016 Policy Position

20. Before this policy position was set, resource consents were issued for taking water without discriminating over the use. The use would be specified as part of the consent and as long as the volume of water could be justified as appropriate for the use intended, resource consent applications were granted provided other environmental considerations were satisfied. These included that:
 - 20.1. there was water available from the water source (within the sustainable allocation limits)
 - 20.2. effects on surface stream flows (through stream depletion) were understood and managed
 - 20.3. effects on adjacent groundwater takes were understood and acceptable
 - 20.4. the activity wouldn't induce saltwater intrusion.
21. Between 2006 and 2015 approximately 5.1 million cubic metres of water was allocated for water bottling. (Of this 1.68 million was been allocated for a mix of uses e.g. irrigation, landscaping and may never be used for water bottling.) The actual taking of water for water bottling purposes is much less than this (28,000 cubic meters in the second half of 2019).

Apollo Foods

22. The Council received a presentation from Apollo Foods in March 2020 where they explained what they do and why they need to be able to include bottled water in their product range.
23. Apollo Foods is a beverage company and produce fruit juice and other high value beverage products. Much of the product they use is what they describe as "cosmetically

challenged fruit” providing a market for horticultural product not otherwise suited for consumption within New Zealand or for exporting. They also have a partnership with Fonterra to produce milk drinks and potentially a protein-based energy drink.

24. Apollo Foods are looking to expand their product portfolio to allow them to continue to expand their markets throughout New Zealand, Australia, Japan and South-East Asia. Some of the potential product range would use more than 90% water in a bottle, triggering the current requirement to publicly notify the consent amendment.
25. They are requesting that Council amend the requirement to notify a change of condition application that would allow for their resource consent to include the use of more than 90% water within a bottle. Expanding their portfolio through the development of added value water based products will drive growth through their current facility, including the establishment of additional jobs.
26. Apollo Foods is not looking for a commoditised water bottling use right but more the ability to leverage off the trends operating within their market destinations to create “added value waters”. The opportunities they see are for healthy, low sugar, nutritious, nutraceutical type products.
27. By way of comparison many of the beverage products consumed daily already have a high percentage of water:

27.1.	Coke Zero	99% water
27.2.	Powerade Zero	99% water
27.3.	Pump flavoured waters	>97% water
27.4.	Fruco OVI hydration	96% water
27.5.	Beer	up to 95% water
27.6.	Milk	88% water
28. An Iceberg lettuce is 96% water, Romaine or Cos lettuce is 95% water, carrots are 88% water and tomatoes are 95% water.
29. The report presented to Council on 29 April was left to lie on the table, pending the feedback from the Regional Planning Committee. The 29 April report did not include an option to amend the 90% water content within the policy. This has since been clarified through additional discussion with Apollo Foods as to their desired product range. They accept that there is some community resistance to the bottling of 100% water but wish to see the opportunity for them to develop other beverage products not captured by the public notification policy.

Options for consideration

30. This report is provided as a review of the current policy position. The options for consideration are the following.
31. *Option 1: Retain the current approach that directs staff to apply special circumstances to water bottling take consent applications.*
 - 31.1. This option will leave it that any application to take water for water bottling purposes or to change a condition or to consider a lapse date extension would need to be publicly notified. The risks associated with this are that the notification may elicit submissions that are outside the scope of the RMA. If this is found to be the case then the applicant may have grounds to object to the costs associated with the entire process. This may also frustrate local initiatives that seek the water bottling option using some of their existing allocation to allow them to compete with the larger multinational providers. It could be argued that this approach indicates predetermination and is not demonstrating a fair process. It could be open to judicial review. It may be preferable that this direction is established via a plan and a rule. It has worked to date. It is less necessary now that TANK has identified the Heretaunga Plains groundwater resource is over allocated.

32. *Option 2: Council or delegated Councillors/ Commissioners could assume the notification decision making responsibility on a case by case basis.* This would leave the discretion to be applied at the time of each application and for each to be considered on their merit.
- 32.1. If either of options 2 were adopted, where a notification decision is to be made, staff consider that the following process could be used:
- 32.1.1. An independent planner would prepare a decision recommendation report and report to a Panel appointed by Council who would make the notification decision.
- 32.1.2. Consideration would have to be given to which Councillors could sit on the Panel for this activity. It may be that there would need to be an independent panel to avoid any potential challenge of predetermination.
- 32.1.3. If submissions are made on the proposal the normal RMA based process (a hearing) would occur with the primary consideration being effects on the environment. It is envisaged that other matters may be raised by submitters, but these are unlikely to form grounds to decline the application.
33. *Option 3: Initiate a simple Plan Change to introduce a rule that requires notification of “water bottling” activities.* This is the option that presents least risk but will take time to achieve. But it should be noted that this approach could have been incorporated into the TANK Plan change, it was considered and it was decided not to.
34. *Option 4: Revert to the pre 2016 state and leave the discretion with staff to consider on a case by case basis.* This is straight forward and would be consistently applied. It could leave Council frustrated if the applications are judged to have effects that are no more than minor and accordingly are not notified and not able to be submitted on.
35. *Option 5: Amend the definition of water bottling to be where the water content of the container is over 99%.* This is an additional option which arises from the Council discussion. The current definition of water bottling is anything that comprises more than 90% of the water taken, but it could be amended to allow, for example, up to 99% water. This would then allow the use of water for the production of energy type beverages and flavoured drinks to be processed without being required to be notified as per the current policy.

Considerations of Tangata Whenua

36. Water is of significant importance to Tangata Whenua. Notification of applications will always allow Tangata Whenua the opportunity to submit on an application if they choose. There is a question of where to draw the line with notification. Should it just be for takes for water bottling or should it be for any groundwater take regardless of use? There may be occasions where tangata whenua would be considered affected and they would be specifically notified through the limited notified process.
37. In this instance Council has specifically sought the views of Tangata Whenua on the water bottling notification policy and any potential amendments.

Financial and Resource Implications

38. There are potential costs to Council depending on the option chosen.
39. Option 1 exposes Council to little additional cost given that the cost of the process is borne by the applicant.
- 39.1. There would be a significant increase in the costs to applicants to proceed with applications if they are publicly notified. The scale of additional costs is difficult to quantify but would be substantial. As a result, it may prove to be prohibitive for people to apply for these consents.
- 39.2. There is a risk that the notification decision could be contested in the High Court by judicial review. For example, in *Associated Churches of Christ Church Extension and Property Trust vs Auckland Council [2014] NZHC 3405* the court

found that notification was contrary to the purpose of achieving efficiency in the consenting process. If the notification decision was appealed to the High Court and the Council was found to have erred in process, then costs could be awarded against the Council.

40. Option 2 has no direct financial or resource implications. This would require some resourcing to convene meetings to decide whether to notify or not, and those costs would be borne by the applicant.
 - 40.1. It may frustrate some applicants who do not wish to risk the notification process. It reduces the risk to Council if the process is run on an objective case by case basis consistent with the RMA. This is one way to do it as is option 4. Consultants and/or Councillors would need to be involved in certain parts.
 - 40.2. Decision making timelines will need to be met to avoid a discount of costs back to the applicant. Council or their delegates would need to be reasonably available to make any decisions delegated to them.
41. Option 3, a Plan change will have cost and resourcing implications that may impact on existing or proposed policy processes. These costs have not been estimated. However as mentioned the TANK process did consider this as an option (to include a notification Rule for water bottling in Plan Change 9) and this was not considered to be appropriate or necessary.
42. Option 4 would not need additional resources. It is the simplest in terms of process. It puts the responsibility on the Consenting staff to administer the process as per RMA requirements. This may not lead to the determination that an application relating to water bottling warrants notification.
43. Option 5 would allow for a wider use of water without need for notification while still ensuring that any process for the bottling of 100% water would continue to be publicly notified. It may reduce the cost to applicants provided they don't wish to bottle 100% water. If the 90% trigger remains then the costs and risks set out in Option 1 remain.

Consultation

44. No consultation has been held on this matter prior to consideration by the Regional Planning Committee, other than the discussion and presentation initiated by Apollo Foods.

Decision Making Process

45. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendations

1. That the Regional Planning Committee receives and considers the "Policy on Notification of Water Bottling Related Consent Applications" staff report.
2. The Regional Planning Committee provides feedback to Hawke's Bay Regional Council in relation to how resource consent applications for activities relating to water bottling should be assessed for notification.

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GROUP MANAGER REGULATION

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: UPDATE ON TUKITUKI REGULATORY IMPLEMENTATION

Item 11

Reason for Report

1. This item provides an update on Tukituki Regulatory Implementation in response to a request from Councilors.

Executive Summary

2. This report outlines the Tukituki Regulatory implementation that has been undertaken by HBRC staff over the last 24 months, and in particular, the response to the Covid-19 and ongoing drought situation.

Background

3. The Tukituki Catchment Plan (Plan Change 6) became operative in October 2015. The Plan sets the freshwater objectives for the Tukituki Catchment. The five objectives are:

OBJ TT1	To sustainably manage the use and development of land, the discharge of contaminants including nutrients, and the taking, using, damming or diverting of fresh water in the Tukituki River catchment so that: (a) Groundwater levels, river flows, lake and wetland levels and water quality maintain or enhance the habitat and health of aquatic ecosystems, macroinvertebrates, native fish and trout; (b) Water quality enables safe contact recreation and food gathering; (i) Water quality and quantity enables safe and reliable human drinking water supplies (c) The frequency and duration of excessive periphyton growths that adversely affect recreational and cultural uses and amenity are reduced; (d) The significant values of wetlands are protected; (e) The mauri of surface water bodies and groundwater is recognised and adverse effect on aspects of water quality and quantity that contribute to healthy mauri are avoided, remedied, or mitigated; (f) The taking and use of water for primary production and the processing of beverages, food and fibre is provided for.
OBJ TT2	Where the quality of fresh water has been degraded by human activities to such an extent that Objective TT1 is not being achieved, water quality shall not be allowed to degrade further and it shall be improved progressively over time so that OBJ TT1 is achieved by 2030.
OBJ TT4	To manage the abstraction of surface water and groundwater within a minimum flow regime and allocation limits that achieve OBJ TT1 while recognising that existing takes support significant investment.
OBJ TT4A	To recognise that industry good practice for land and water management can assist with achieving Objectives TT1, TT2 and TT4
OBJ TT5	Subject to Objectives TT1, TT2 and TT4, to enable the development of on-farm storage and Community Irrigation Schemes that improve and maximise the efficient allocation and efficient use of water.

4. The Council is managing land use activities in the Tukituki Catchment in order to maintain and achieve the limits and targets set in the Tukituki Catchment Plan (the Plan).
5. One of the major regulatory deadlines in the Plan is the requirement for farming operations above 4 ha (apart from low intensity farming systems under 10 ha), to have completed Farm Environment Management Plans (FEMPs) by 31 May 2018.

6. The majority of FEMPs have been completed and summaries submitted to HBRC. Compliance continue to follow up on any remaining properties that did not register a FEMP or a low intensity checklist form. The dominant property type still missing a FEMP are deemed low risk – small lifestyle blocks.

Discussion

Consent Requirements

7. The next major regulatory deadline in the Plan is the requirement for production land use consents to be obtained for:
 - 7.1. farm properties which are unable to comply with the stock exclusion rules
 - 7.2. farm properties or farm enterprises exceeding 4 ha (apart from low intensity farming systems), where:
 - 7.2.1. a subcatchment is exceeding the dissolved inorganic nitrogen (DIN) limit of 0.8 mg/L (based on a five year rolling average), or
 - 7.2.2. the nitrogen leached from a property exceeds the Tukituki LUC Natural Capital: Nitrogen Leaching Rates in Table 5.9.1D¹.

¹ Note the separate report to this committee meeting on *Proposed Plan Change 6A: Tukituki Catchment – Table 5.9.1D*.
8. The deadline for the first tranche of land use resource consents in the Tukituki Catchment is **1 June 2020**.
9. Resource consents are required for:
 - 9.1. Individual properties from across the whole Tukituki Catchment exceeding the Tukituki Nitrogen Leaching Rates
 - 9.2. Properties in subcatchments exceeding the DIN limit (Papanui, Kahahakuri and Mangaonuku)
 - 9.3. Properties not able (or willing) to comply with stock exclusion rules.
10. Approximately 273 land use resource consent applications are due by the 31 May 2020.
11. Further land use resource consents will be required from farms within other subcatchments, if these exceed the DIN limit of 0.8 mg/L (based on a five-year rolling average). The DIN limit is predicted to exceed in the Tukipo, Porangahau, Maharakeke and Upper Tukituki Corridor subcatchments towards the end of 2020 or early 2021.

Implementation support HBRC has provided to landowners

12. HBRC staff have been working on the implementation of the Tukituki Catchment Plan, with a particular focus on the resource consent requirements since the FEMP deadline of 31 May 2018.
13. Staff have worked with primary industry stakeholders to produce the required Procedural Guidelines, which set out how HBRC will approach the resource consenting process.
14. HBRC has engaged with the Tukituki Catchment community through a series of subcatchment meetings, direct communication via letters to the identified applicants and substantial media comms.
15. HBRC have facilitated a feasibility study looking at opportunities for Wetland construction in the Tukipo subcatchment, working closely with the Tukipo community. External funding has been sourced and construction of the first wetland is underway. It is hoped the lessons learnt here can be utilised in other Tukituki subcatchments.
16. HBRC will complete the required cumulative assessment of effects at a subcatchment scale on behalf of the applicants, thereby ensuring consistency and sharing the cost across all applicants.

17. HBRC staff have worked with Federated Farmers to investigate other potential areas, including policy analysis, where applicants can opt to be part of a wider group and thereby reduce the cost to the individual applicants.

Impacts of drought and Covid-19

18. A significant drought was declared on 12 March 2020. The Tukituki Catchment has been particularly adversely affected by this and the impacts on the community have been severe.
19. Staff were preparing to undertake further engagement with the Tukituki Community in the form of subcatchment meetings when the impact of Covid -19 hit. As a consequence, these meetings were cancelled.
20. Due to the combined impact of the ongoing drought and Covid-19, it quickly became apparent that applicants were going to struggle to meet the 31 May deadline.
21. An interim solution was sought, including discussions with staff from the Ministry for the Environment (MfE) to determine whether a 12 month extension of the 31 May deadline for resource consent applications would be possible. The indication from MfE was that an extension was unlikely to be approved under the pandemic response legislation available to the Minister.
22. In the meantime, an interim process was established that would ensure that applicants demonstrate their intention to comply with the regulatory requirements. This recognises that applicants have been unable to have service providers, such as nutrient budget providers and farm consultants, on their properties under Alert Level 3 and 4 of the Covid-19 response.
23. Applicants were advised to submit their full applications to HBRC by the 31 May deadline, including the required application deposit, if they were able to do so.
24. Those applicants that were unable to submit a full application can submit a simpler 'placeholder' pre application, which will be received by HBRC as a sign of intent by the applicant to submit a full application, once circumstances allow them to do so. No application fee is required as part of the pre application, but the cost of processing the consents will be recovered.
25. Communication and media release were widely circulated in the Tukituki Catchment, via primary industry stakeholder networks, emails, social media posts, radio interviews and newspaper notices. Once access to Dalton street offices was allowed under Level 3, letters were sent to identified applicants.

Next Steps

26. While restrictions imposed due to the Covid-19 response are easing, the ongoing drought is continuing to have a severe impact on the Tukituki community.
27. Approximately 273 potential land use resource consent applications are due by the 31 May deadline. To date, 14 full applications have been lodged with HBRC and 11 pre applications have been received. However, staff continue to field enquiries regarding the process and provide advice to landowners who may have already made adjustments to their farming practices, which mean they no longer require resource consents. In these circumstances they are required to supply evidence, such as updated FEMPs and nutrient budgets, to HBRC to confirm their new status as a Permitted Activity.
28. Once the 31 May deadline has passed, and the Covid-19 and drought situations have been reassessed, landowners in the Tukituki Catchment will be advised of a new deadline by which date full applications will be required from those who initially lodged a pre application.
29. Post the 31 May 2020 deadline, the compliance team will follow up with any overdue applicants, who have not submitted a full application, or taken opportunity of the interim pre application option made available to them.
30. The proposed Compliance response will be:

- 30.1. To follow up with either a letter or a phone call to discuss with the applicant why they have not applied
 - 30.2. Work through any issues that can be dealt with e.g. lack of awareness/ understanding / stress due to drought etc
 - 30.3. Send a letter giving a timeframe (date) by which a pre app (as a minimum), has been submitted (e.g. 5/ 10 working days)
 - 30.4. Follow up any that either refuse in the first instance or who do not comply with the first request for a pre app within the stated timeframe and enforcement next steps.
31. Once a new deadline (date for when full applications need to be submitted to HBRC) has been agreed upon and communicated to the affected parties, a repeat of the above Compliance response will be followed.

Other resource consenting matters.

- 32. Surface water is allocated to the limits set by the plan. The surface water takes are expiring this year and require new applications. This will allow the Plan minimum flow conditions to be fully implemented. A higher minimum flow of 5,200 L/s takes effect at Red Bridge from 1 July 2023. Minimum flows have been triggered this year and water use has had to cease for an extended period this season. Applications have been made for emergency water use in line with the plan.
- 33. Groundwater within the Ruataniwha and Otane catchments is allocated to the limits set by the plan. Water use has been high this season reflecting the drought conditions and some consent holders have reached their maximum. Staff have been working with some of these to enable unused water to be accessed. This allows for the use of more water but not for the overall allocation to be exceeded.
- 34. There is provision in the Plan for a further 15 million cubic meters of groundwater water to be allocated as Tranche 2 water. This has all been applied for. The applicants have been requested to provide further information and this is still to be provided. The information was to determine the effects of taking this water and the extent to which these effects need to be offset.

Decision Making Process

- 35. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the *“Update on Tukituki Regulatory Implementation”* staff report.

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Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: AIR QUALITY JUNE 2020 UPDATE

Item 12

Reason for Report

1. This item provides the Regional Planning Committee with an update on the following air quality related matters:
 - 1.1. An overview of the proposed amendments to the National Environmental Standards for Air Quality (NESAQ)
 - 1.2. Current state of air quality in Hawke's Bay
 - 1.3. Recent air quality complaints and pollution response.

Review of the National Environmental Standards for Air Quality

2. The Government is currently consulting on proposed amendments to the National Environmental Standards for Air Quality (NESAQ). Submissions close on 31 July 2020.
3. Staff are currently drafting a submission on the proposed amendments. Staff at the four other Hawke's Bay Councils have been invited to jointly submit on the amendments with HBRC.
4. Key changes to the NESAQ are:
 - 4.1. Introduction of a daily and annual ambient PM_{2.5} (fine particulate matter) standard
 - 4.2. Stricter standards for newly-installed domestic solid fuel burners
 - 4.3. Standards apply to all domestic solid fuel burners
 - 4.4. Indefinite ban on new open fires in airsheds when standard is breached
 - 4.5. Prohibition on the use of mercury in industrial processes.

Implications for Hawke's Bay

5. Additional monitoring and modelling work needs to be undertaken before the implications of a PM_{2.5} standard on our region are fully known.
6. Notwithstanding, based on limited PM_{2.5} monitoring data, it is anticipated that the amended NESAQ will result in the following:
 - 6.1. Additional regulatory and non-regulatory methods for Napier and Hastings to meet the proposed PM_{2.5} standard
 - 6.2. Two new airsheds – Wairoa and Waipukurau and associated regulatory and non-regulatory methods to meet the proposed PM_{2.5} standard
 - 6.3. An expansion of HBRC's financial assistance scheme to assist with the upgrade of existing woodburners.
7. Further PM_{2.5} monitoring and modelling will confirm whether new airsheds are necessary and will allow Council to determine the most appropriate management measures needed to meet the new PM_{2.5} standard.
8. The results of the PM_{2.5} monitoring undertaken in Hawke's Bay to date, is discussed in Paragraph 25.

Outdoor Burning

9. The proposed NESAQ amendments do not regulate outdoor burning. Council staff's draft submission proposes asking the Minister to amend the NESAQ to include new regulations for outdoor burning to minimise PM₁₀ and PM_{2.5} emissions, and localised smoke, from this practice.

Current State of Air Quality in Hawke's Bay

Napier and Hastings Airsheds

10. Concentrations of PM₁₀ in the Napier and Hastings Airsheds have decreased since continuous monitoring began 14 years ago. The maximum 24 hour concentration recorded in both Napier and Hastings in the last three years was 55 µg/m³, compared to a high of 132 µg/m³ measured in Hastings in 2006 and 86 µg/m³ in Napier in 2007. Napier has not breached the NESAQ for PM₁₀ in the last five years. Hastings has not breached it since September 2016, when the NESAQ required no more than three exceedances of the PM₁₀ limit of 50 µg/m³ in that airshed. The annual average concentration in both airsheds in recent years has been below the guideline of 20 µg/m³, measuring 13 µg/m³.
11. Five-yearly air emissions inventories show that the gains in air quality have been achieved by a decrease in emissions of approximately 6.5% per year over the past fifteen years and primarily through changes in home heating. Recent inventories have not accounted for outdoor burning on production land that lies adjacent to or within the airsheds. An inventory of this activity was undertaken in 2016. It estimated emissions per day during winter were equivalent to approximately 20% of the total emissions generated within Airzone 1 of each airshed on an average winter's night. The variability of this activity in space and time has made it difficult to quantify its contribution to airshed concentrations. However discharges of smoke have considerable localised impacts. Smoke related complaints saw a seven-fold increase over the last twenty years.

Awatoto Airshed

12. The Awatoto Airshed is industrial and coastal in nature. Natural sources contribute significantly to PM₁₀ concentrations in the airshed therefore achieving the NESAQ is more challenging than in the Napier and Hastings Airsheds. The annual average PM₁₀ concentration is relatively high compared to the residential airsheds but it remains within the guideline at 18-19 µg/m³. Maximum 24 hour concentrations have reached 81 µg/m³ and exceedances of the PM₁₀ limit have typically ranged between one and three per year. The NESAQ allows for only one exceedance in the airshed. Some exceedances have been deemed "exceptional events" under the regulations and attributed to high levels of sea salt. No discernible trends are evident in PM₁₀ concentrations since monitoring began in 2012 and exceedances are not limited to a particular season.

Whirinaki Airshed

13. The Whirinaki Airshed is another airshed which is coastal in nature but dominated by one industry. The monitoring in that airshed is undertaken in relation to a resource consent and results provided to the Council's Compliance team.

Waipukurau, Waipawa, Wairoa

14. Rural centres have previously been monitored for PM₁₀ exceedances, typically for a year at a time. This monitoring has mostly been done using low cost sensors that do not meet the instrument standards set in the NESAQ. Results from these sensors suggest the rural centres are able to meet the current NESAQ for PM₁₀.

NESAQ – pollutants other than PM₁₀

15. The NESAQ sets limits on additional pollutants other than PM₁₀. These are carbon monoxide, nitrogen dioxide, sulphur dioxide and ozone. Roadside monitoring of these contaminants every four to five years shows levels are below the NESAQ limits and also below the World Health Organisation (WHO) guidelines. A recent short-term monitoring project on Breakwater Road, near the Port of Napier also found these contaminants, along with PM₁₀, were within the NESAQ. Sulphur dioxide was above the WHO 24 hour guideline on one occasion and attributed to shipping emissions. Sulphur dioxide is also monitored in the Awatoto Airshed in relation to an industrial consent. The WHO 24 hour guideline was exceeded three to six times per year between 2014 and 2018. Breaches of the NESAQ 1 hour average occurred in 2014, 2016 and 2018. The WHO guideline

was not exceeded and the NESAQ was not breached last year however the ambient monitoring was disrupted in September 2019 and has not been reinstated yet.

16. Levels of arsenic and lead have been tested in the Napier and Awatoto airsheds in recent years. These were found to be within the New Zealand guidelines. Testing in Hastings will hopefully be undertaken in the next few years. Concentrations of these contaminants in ambient air are linked to the burning of treated and painted wood, which are prohibited activities.

NESAQ - $PM_{2.5}$

17. The proposed NESAQ amendments include new limits on annual and daily averages of $PM_{2.5}$. The proposed limits are in line with WHO guidelines. It would allow for three exceedances of a daily limit of $25 \mu\text{g}/\text{m}^3$ per year and set an annual limit of $10 \mu\text{g}/\text{m}^3$. Monitoring of $PM_{2.5}$ in the Napier, Hastings and Awatoto Airshed's indicates that the annual limit would be met. The limit on daily exceedances would be met in the Awatoto airshed, where a measurement greater than $25 \mu\text{g}/\text{m}^3$ has occurred only once since 2016. In Napier it was exceeded five times last year and ten in Hastings. $PM_{2.5}$ monitoring in the rural centres has been conducted using low cost sensors. Last winter the sensors recorded fifteen measurements in Wairoa above $25 \mu\text{g}/\text{m}^3$ and an annual average of $10 \mu\text{g}/\text{m}^3$. Results for Waipukurau are available for just half a winter season but the limit was exceeded nine times in that period.

Pollution Response

18. The Hawke's Bay Regional Resource Management Plan (RRMP) currently has rules in place which manage the emissions from domestic wood burners, and restricts outdoor burning in Napier and Hastings during the winter months.
19. Despite this, Council receives a number of complaints each year. Table 1 sets out the number of burning complaints received between 2017 and 2019.

Table 1: Indoor/outdoor burning complaints (2017- 2019)

Type of burning	2017	2018	2019
Burning Materials (Non-Vegetation)	45	60	83
Burning Vegetation	76	114	130
Burning indoor (domestic)	31	61	48

Outdoor burning for horticultural purposes

20. Outdoor burning during the winter months, in the Napier and Hastings Airsheds, is classed as a non-complying activity, except when burning is taking place for disease control or orchard redevelopment (Rule 19e).
21. The Council's Pollution Response Team has observed an increase in outdoor burning complaints over the last three years, possibly as a result of the exceptions allowed in Rule 19e.
22. In particular, there have been a number of smoke complaints related to the burning of diseased material, and in some instances Rule 19e has been used to justify the mass removal and burning of orchard trees within the same day. Depending on the scale, smoke emitted from these fires can last for several days.
23. In 2018-2019, the conditions of Rule 19e were strictly enforced to address concerns around this practice. During this period, a total of 101 infringement fines were issued for smoke nuisance, the majority of which were related to outdoor burning.
24. Notwithstanding, there has been a positive start to 2020 with a number of major orchard redevelopments using a large scale mulching machine instead of burning. The downside of mulching is the limited disposal options available for the large quantity of mulch generated.

Outdoor burning of waste for disease/quarantine control

25. The burning of waste for disease/quarantine control can occur in accordance with the Biosecurity Act, or where the Hawke's Bay Regional Council has declared a Biosecurity risk (Rule 20a).
26. The National Beekeepers Association currently has authority to manage their own disease control programs pursuant to the Biosecurity Act, and requires beekeepers to destroy American Foulbrood disease (AFB) infected hives.
27. In 2018 and more recently, a pallet of plastic beehives was burned to destroy AFB under Rule 20a. In 2018, the burning was carried out in a manner which resulted in excessive smoke and a \$300 fine was issued.
28. Over the last few years, Council staff have contacted the National Beekeepers Association about their destruction methods. Particularly, given this type of disposal directly conflicts with other rules contained within the RRMP, which prohibit the burning of plastic.
29. The National Beekeepers Association have advised that due to the increased use of plastic beehives, this type of burning is becoming problematic for local authorities.

Next Steps

30. The review of the RRMP is due to commence in the 2020/2021 financial year. The air quality rules will be reviewed and updated as part of this review. As a minimum, the following air quality related matters will be addressed in the RRMP review.
 - 30.1. Consistency with the WHO air quality guidelines
 - 30.2. Consistency with the amended NESAQ
 - 30.3. Outdoor burning for horticultural purposes
 - 30.4. The burning of waste for disease/quarantine control
 - 30.5. Discharges to air from industrial and trade premises.

Decision Making Process

31. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the "*Air Quality June 2020 Update*" staff report.

Authored by:

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Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: UPDATE ON GOVERNMENT'S HEALTHY WATERWAYS REFORM PACKAGE

Item 13

Reason for Report

1. This item provides an update on Central Government's '*Action for Healthy Waterways*' reform work programme.

Executive Summary

2. In September 2019, the Government released a package of proposals for future action for healthy waterways which followed on from earlier *Essential Freshwater* work. An independent panel has been considering over 5000 submissions received on those proposals, meanwhile the Environment Select Committee has just recently reported back on the resource Management Amendment Bill 2019 which features a new freshwater planning process to replace the current RMA Schedule 1 processes.
3. At the time of writing this report, details of any amendments to the package remain undisclosed and are not publicly available due to decisions yet to be made by Ministers, Cabinet and Parliament.
4. In the interim, staff have commenced preliminary planning for the upcoming release of a new national policy statement for freshwater management; a new national environmental standard for freshwater; regulations for stock exclusion from waterbodies; and an entirely new RMA planning process for freshwater-related plans and plan changes.
5. Staff anticipate these new national policy instruments will be confirmed and in effect in some form before the General Election in September 2020.

Update on Government's proposals

6. The Government committed to addressing freshwater issues, and in 2018 established a work programme, titled *Essential Freshwater – Healthy Water, Fairly Allocated*. Its objectives are to:
 - 6.1. stop further degradation and loss – a series of actions now to stop the degradation of freshwater and make improvements within five years
 - 6.2. reverse past damage to bring freshwater resources to a healthy state within a generation, and
 - 6.3. address water allocation issues to achieve efficient and fair allocation of freshwater and nutrient discharges.
7. On 5 September 2019, the Government released a discussion document, '[Action for Healthy Waterways](#)' containing proposals for national direction that were generated through the earlier *Essential Freshwater* work. The self-described package would:
 - 7.1. *"strengthen Te Mana o Te Wai as the framework for freshwater management*
 - 7.2. *better provide for ecosystem health (water, fish and plant life)*
 - 7.3. *better protect wetlands and estuaries*
 - 7.4. *better manage stormwater and wastewater, and protect sources of drinking water*
 - 7.5. *control high-risk farming activities and limit agricultural intensification*
 - 7.6. *improve farm management practices."*
8. Attachment 1 is a one-page summary of the Action for Healthy Waterways proposals.

9. During preparation of the proposals, Ministers and Crown officials had worked closely with the following advisory groups:
 - 9.1 [Te Kahui Wai Māori — the Māori Freshwater Forum](#)
 - 9.2 [Freshwater Leaders Group](#)
 - 9.3 [Science and Technical Advisory Group](#)
 - 9.4 [Essential Freshwater Regional Sector Water Group](#).
10. The public submission period for Government's Action for Healthy Waterways policy package closed on 31 October 2019. Hawke's Bay Regional Council contributed to the Regional Sector-Local Government NZ [submission](#), as well making a [joint submission](#) alongside most of the territorial authorities of the region.
11. Ministry for the Environment (MFE) received over 5000 submissions. A five-member independent advisory panel chaired by Judge David Sheppard has since been considering those submissions and was due to provide advice to Government in February. MFE officials are also developing recommendations.
12. Ministers will consider the Independent Panel's report before deciding whether or not to proceed with the proposals or make changes. Cabinet decisions are expected in May, but the COVID-19 events may have recently altered Cabinet's priorities.
13. Subject to Cabinet's decisions, the following key proposals in the Government's work programme are all in the pipeline to come into effect prior to the General Election in September:
 - 13.1. a completely [new re-written National Policy Statement](#) for Freshwater 2020
 - 13.2. a completely [new National Environmental Standard](#) for Freshwater 2020, and
 - 13.3. a [new regulation](#) under section 360 of the RMA for stock exclusion.
14. Another key element of the proposals which is progressing as part of the [Resource Management Amendment Bill 2019](#) is the proposal for a freshwater plan-making process. A 2017 review of the 16 regional and unitary councils' progress in implementing the current NPS-FM showed that the standard planning process under Schedule 1 of the RMA creates a barrier to the timely implementation of the NPS-FM – particularly consultation requirements and the scope for appeals to prolong plan-making processes.
15. On 30 March 2020, the Environment Select Committee presented [a 75-page report](#) back on the Bill. The next step is currently pending Parliament to reconvene where the Bill will have its final reading in the regular Parliamentary process post-COVID-19 restrictions.
16. In addition there is on-going work to reform the regulation, delivery and funding of the three waters system (drinking water, wastewater and stormwater). The Three Waters Programme is part of the wider Essential Freshwater work programme, and together they are designed to create a system to better manage urban and rural water issues. As well as regulatory RMA tools, there are a range of other initiatives at both central and local government level that aim to improve the quality of freshwater. For example, at the national level this includes the Freshwater Improvement Fund, the Te Mana o te Wai Fund, and the partnership for good farming practice.

Preparing for Impact

17. The proposed 2019 'Action for Healthy Waterways' package signals a considerable increase in the scope of work required to fully implement the NPSFM into the regional policy statement and regional plans, while substantially decreasing the timeframe to get this done (notification of plan changes by the end of 2023 instead of fully operative plans by December 2030). Given the large number and scope of submissions lodged, planning staff expect the draft policy package will change substantially before gazettal, but we cannot know for certain what those changes will be.

18. The scale of 2019's proposals would have wide ranging impacts on many parts of the organisation (e.g. environmental monitoring, data management, science investigations, policy and plan drafting, Maori partnerships, communications, consents, compliance, asset management, finance and governance to name several). The proposals posed significant challenges in terms of capacity to deliver everything within timeframes that the Government wanted. Many regional council and local government submissions firmly echoed that while supporting the general overall intent of the Government's proposals.
19. At the time of writing this report, there was no publicly available content or announcement on the latest progress of the Government's package. Staff are not prepared to speculate in this report what may or may not be in the latest proposals. However, planning staff are pretty confident that our current freshwater plan-making work programme will need to dramatically change to get freshwater plans done faster.
20. Senior staff have already commenced preliminary planning about this. That work has also considered the wave of implications anticipated to emerge from the number of other pieces of national direction (e.g. national policy statements on urban development, highly productive land and indigenous biodiversity, national environmental standards on air quality and outdoor storage of tyres, RMA amendment legislation and so on). The preliminary planning will also serve to inform the Regional Council's resourcing needs, prioritising and ultimately drafting of the 2021-31 Long Term Plan.
21. The preliminary work programme re-design indicates a broader reform of the Regional Policy Statement and RMA regional plans is required to not only deliver on the Government's freshwater proposals, but also deliver updated policy in a timely manner on a range of other issues such as climate change response, enhancing indigenous biodiversity, natural hazard management, air quality, the marine environment, urban growth and numerous other issues.
22. Meanwhile, staff continue to actively look for opportunities to learn from and share with other councils. Furthermore, the regional sector group is considering opportunities to jointly progress some parts of any new freshwater requirements nationally, by collaborating between councils and with central government. Preliminary planning is also underway towards sizing likely implementation requirements for the NESF and s360 stock exclusion regulation, but further work will hinge on Cabinet's decisions expected sometime soon.
23. After the Government has confirmed its freshwater policy package, staff will provide the Committee with further briefings in relation to implications for the preparation and review of the Council's Regional Policy Statement and regional plans under the RMA.

Decision Making Process

24. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the "*Update on Government's Healthy Waterways Reform Package*" staff report.

Authored by:

Gavin Ide
PRINCIPAL ADVISOR STRATEGIC
PLANNING

Approved by:

Tom Skerman
GROUP MANAGER STRATEGIC
PLANNING

James Palmer
CHIEF EXECUTIVE

Attachment/s

[↓](#) 1 Summary of Action Plan for Healthy Waterways proposals (2019)

Summary of Major Elements in Government's Essential Freshwater proposals



Item 13

Attachment 1

WHY: The current NPS requires councils to have plans by 2025 – but most can't achieve that. Planning is costly, time consuming, often litigious and highly variable. Need a planning process that allows the transition to start as soon as possible, and is more responsive to change.

1. Accelerated planning process (RM Bill) – already approved

- Use specialise panel to consider Councils' proposed plans
- Where Councils reject panel's recommendations – the council's proposals can be appealed.
- Otherwise no de novo appeals
- Makes it possible for councils to have Plans that reflect the new NPS-FM in place by 2025 to start the transition
- Reduces costs and litigation
- Increases capability / specialisation of plan development and improves national consistency
- Reduces risk of capture by vested interests

WHY: Councils have always had responsibility to protect waterways, but many have failed to do so. Also many don't collect all the information needed to fully understand outcomes, and don't set longer term objectives with their communities about what they want for their local waterways

2. New National Policy Statement – Freshwater Management (will take councils until 2025 to give effect to the NPs)

- Central Government directs Councils under RMA
- Requires a long term vision for waterbodies applying Te Mana o te Wai framework
- Sets bottom lines for water quality and ecosystem health
- Councils must develop plans in certain ways – consult Māori and communities, identify values, set objectives
- Councils must set limits and/or implement action plans to achieve values and objectives
- Councils must monitor certain things in certain ways
- Councils set timeframes for achieving freshwater outcomes – could take a generation or more

WHY: Until councils get plans in place (see 1 and 2 above) intensification can continue, creating more degradation and making it even harder and more expensive to fix waterways in future.

3. Interim controls on intensification and other 'holding the line' (NES)

- Dairy conversions
- Forestry to pasture
- Irrigation expansion
- Winter grazing expansion
- Vegetable growing expansion
- Protection of wetlands
- Protection of streams (mostly urban development)
- In all cases the controls are not absolute (not a ban) – but allow flexibility for development that doesn't create more harm

WHY: big improvements possible with good practice, but many farms don't meet this and many don't plan to manage environmental impacts. Some practices are very risky.

4. Practice standards for agriculture (NES and Regs)

- Mandatory Freshwater Module Farm Environment Plans
- FEP Approach 1: Good Management Practice (GMP) actions not necessarily enforceable so add regulatory controls on:
 - Stock exclusion
 - Winter grazing
 - Excessive use of nitrogen or fertilizer controls
 - Stock holding areas
 - Feedlots
- FEP Approach 2: GMP actions enforceable (through new legislation)
 - No/few additional regulatory controls
- Water extractors must use telemetry reporting

WHY: many operators are not at good practice, not reporting performance and not meeting consent conditions. Effluent discharges to beaches and streams.

5. Practice standards for Urban (NES)

- Mandatory Environment Management Plans for wastewater and storm water operators
- Regulated standards for Waste water treatment plants
- New reporting requirements on wastewater and storm water operators
- Urban design requirements

WHY: to improve outcomes with least cost and most co-benefit, need to accelerate dissemination of good practice, innovation and technologies. Need to provide policy certainty and make decision-support tools fit for purpose. Opportunity to mobilise community resources and better coordinate government support.

6. Support for Productive and Sustainable Land Use

Budget 19 Support Package

- Farm extension services and direct assistance to consider new farm systems
- Development of Maori owned farms
- Developing practice standards and guidance for use in farm plans
- Developing decision support tools and information like Overseer, S-Map
- Support for councils and others to implement NPS-FM in Plans by 2025
- At place investment – supporting community led action
- Developing policy on allocations and Maori Rights and Interests – scheduled for initial round of public consultation late 2019

Other programmes

- One Billion Trees, Billion Trees programme, Highly Productive Soils NPS, Biodiversity NPS



HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: RESOURCE MANAGEMENT POLICY PROJECTS UPDATE

Item 14

Reason for Report

1. This report provides an outline and update of the Council's various resource management projects currently underway.

Resource management policy project update

2. The projects covered in this report are those involving reviews and/or changes under the Resource Management Act to one or more of the following planning documents:
 - 2.1. the Hawke's Bay Regional Resource Management Plan (RRMP)
 - 2.2. the Hawke's Bay Regional Policy Statement (RPS) which is incorporated into the RRMP
 - 2.3. the Hawke's Bay Regional Coastal Environment Plan (RCEP).
3. From time to time, separate reports additional to this one may be presented to the Committee for fuller updates on specific plan change projects.
4. Similar periodical reporting is also presented to the Council as part of the quarterly reporting and end of year Annual Plan reporting requirements.

Outstanding Water Bodies Plan Change 7

5. The Outstanding Water Bodies Proposed Plan Change 7 was notified on 31 August 2019, with submissions closing on 28 February 2020.
6. Submissions
 - 6.1. 41 submissions were received, with 900 + submission points.
 - 6.2. The majority of submissions were generally supportive of the intent of Change 7, while requesting changes to objectives, policies, definitions and the list of OWB's.
7. Financial assistance
 - 7.1. In 2019, Heretaunga Tamatea Settlement Trust, Hineuru Iwi Trust, Ruapani and Tatau Tatau were offered funding to assist with their submissions on Change 7. Hineuru Iwi Trust took up this offer.
8. Submissions - Iwi groups
 - 8.1. 8 iwi groups submitted on Change 7 as follows:
 - 8.1.1. Hineuru Iwi Trust
 - 8.1.2. Maungaharuru-Tangitu Trust
 - 8.1.3. Ngati Kahungunu Iwi Incorporated
 - 8.1.4. Te Taiwhenua o Heretaunga, et. al.
 - 8.1.5. Ngati Kahungunu Wairoa Taiwhenua Incorporate
 - 8.1.6. Owhaoko C Trust
 - 8.1.7. Te Tumu Paeroa
 - 8.1.8. Waikaremoana Tribal Authority.

9. Hearing panel
 - 9.1. In May, iwi authorities were invited to nominate commissioner(s) to hear Change 7 who have an understanding of Tikanga Maori, cultural and spiritual values, and the perspectives of local iwi or hapu.
10. Next steps
 - 10.1. Change 7 hearing panel selection (next RPC).
 - 10.2. RPC to consider and decide on a pool of hearing commissioners for Change 7, including nominations from iwi authorities.

Mohaka Plan Change

11. Progress on the Mohaka Plan Change has encountered a minor delay due to Covid-19. The following outlines the progress that has been made and next steps:
 - 11.1. Policy and Maori Partnerships staff have held meetings with 3 of the 8 iwi with interests in the Mohaka Catchment (Pahauwera, Tuwharetoa and Tuhoe)
 - 11.2. A pan-iwi hui will now be arranged (once the lockdown level drops) to discuss their participation in the plan change process and input to the RPC
 - 11.3. A catchment group comprising iwi representatives and regional councillors representing the catchment is one possibility for bridging between the RPC, stakeholders and the community
 - 11.4. Once iwi have agreed on their involvement, a report will be presented to the RPC for consideration of the plan change process
 - 11.5. Science information is being updated to reflect the latest State of the Environment reports.

Decision Making Process

12. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the *“Resource Management Policy Projects Update”* staff report.

Authored by:

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MANAGER POLICY AND PLANNING

Approved by:

Tom Skerman
GROUP MANAGER STRATEGIC
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Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

SUBJECT: JUNE 2020 STATUTORY ADVOCACY UPDATE

Item 15

Reason for Report

1. This item reports on proposals forwarded to the Regional Council and assessed by staff acting under delegated authority as part of the Council's Statutory Advocacy project.
2. The Statutory Advocacy project (Project 196) centres on local resource management-related proposals upon which the Regional Council has an opportunity to make comments or to lodge a submission. These include, but are not limited to:
 - 2.1. resource consent applications publicly notified by a territorial authority
 - 2.2. district plan reviews or district plan changes released by a territorial authority
 - 2.3. private plan change requests publicly notified by a territorial authority
 - 2.4. notices of requirements for designations in district plans
 - 2.5. non-statutory strategies, structure plans, registrations, etc prepared by territorial authorities, government ministries or other agencies involved in resource management.
3. In all cases, the Regional Council is **not** the decision-maker, applicant nor proponent. In the Statutory Advocacy project, the Regional Council is purely an agency with an opportunity to make comments or lodge submissions on others' proposals. The Council's position in relation to such proposals is informed by the Council's own Plans, Policies and Strategies, plus its land ownership or asset management interests.
4. The summary outlines those proposals that the Council's Statutory Advocacy project is currently actively engaged in. This period's update report excludes the numerous Marine and Coastal Area Act proceedings little has changed since the previous update.

Decision Making Process

5. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

Recommendation

That the Regional Planning Committee receives and notes the "*June 2020 Statutory Advocacy Update*" staff report.

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Ceri Edmonds
MANAGER POLICY AND PLANNING

Approved by:

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Attachment/s

[!\[\]\(0f848bbd71cef6b345273b16f905912a_img.jpg\) 1](#) Statutory Advocacy Update June 2020

Statutory Advocacy Update (as at 1 April 2020)

(Note updates since last RPC meeting are provided in red text)

TABLE 1: NATIONAL PROPOSALS

Received	Proposal	Agency	Status	Current Situation
Feb 2020	Proposed Amendments to National Environmental Standard for Air Quality The consultation document sets out several key changes relating to particulate matter and mercury in the current 2004 NES: <ul style="list-style-type: none"> • Introduction of a daily and annual ambient PM2.5 (fine particulate matter) standard • Stricter standards for newly-installed domestic solid fuel burners • Standards apply to all domestic solid fuel burners • Indefinite ban on new open fires in airsheds when standard is breached • Prohibition on the use of mercury in industrial processes. 	Ministry for the Environment	Public feedback closes 31 July 2020	Staff reviewing consultation document and proposals. Draft submission in preparation. Also refer to separate briefing paper in agenda for Regional Planning Committee's 3 June 2020 meeting.
Feb 2020	Proposed National Environmental Standard for the outdoor storage of tyres The consultation document sets out options for the proposed NES to respond to the risks associated with tyres stored outdoors and to provide the clarity needed about regulation of such tyres under the Resource Management Act 1991.	Ministry for the Environment	Public feedback closed 25 March 2020	Submission lodged, a copy can be found at HBRC Submissions .
Jan 2020	Improving Whitebait Management Discussion document detailing proposed management changes for whitebait. It proposed a management goal for the six species fished as whitebait, management outcomes for the whitebait fishery, amendments to the whitebait fishing regulations, and to phase out export of the whitebait species.	Department of Conservation	Public feedback closed 16 March 2020	Submission lodged, a copy can be found at HBRC Submissions .

Received	Proposal	Agency	Status	Current Situation
26 Nov 2019	Draft National Policy Statement for Indigenous Biodiversity (NPS-IB) The proposed NPS-IB sets out the objectives and policies to identify, protect, manage and restore indigenous biodiversity under the Resource Management Act 1991. https://www.mfe.govt.nz/publications/biodiversity/draft-national-policy-statement-indigenous-biodiversity	Ministry for the Environment	Public feedback closed 14 March 2020.	HBRC, NCC, HDC and CHBDC lodged a joint submission. The cover letter and a copy of the full submission can be found at HBRC Submissions .
14 Nov 2019	Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation This consultation document sets out a range of options for modernising the legislation relating to death, burial, cremation and funerals in New Zealand, including the Burial and Cremation Act 1964, Cremation Regulations 1973 and the Health (Burial) Regulations 1946.	Ministry of Health	Public feedback closes 31 July 2020.	Submission lodged, a copy can be found at HBRC Submissions .
Sept 2019	Resource Management Act 1991 Amendment Bill The Bill includes a new freshwater planning process which will support implementation of the upcoming National Policy Statement for Freshwater Management 2020. The Bill also addresses issues with: <ul style="list-style-type: none"> resource consenting enforcement Environment Court provisions within the RMA. 	Ministry for the Environment	Public feedback closed 7 November 2019. Bill pending Parliament's Third Reading process	Submission lodged, a copy can be found at HBRC Submissions . The Environment Select Committee released their report on the Resource Management Amendment Bill on 30 March 2020. The report recommends general adjustments to resource management and a new freshwater planning process and introduces the inclusion of climate change considerations in Resource Management Act 1991 (RMA) decision making. Bill is subject to Parliamentary legislative process (e.g. Third Reading) before it can come into effect. A summary update of the report was provided to the Extra Regional Council meeting on the 15 April 2020 and can be found here .
5 Sept 2019	Action for Healthy Waterways MfE has notified a discussion document on national direction for our essential freshwater, together with: <ul style="list-style-type: none"> Draft National Policy Statement for Freshwater Management (NPS-FM) Proposed National Environmental standards for Freshwater (NES-FW) Draft Stock Exclusion Section 360 Regulations Link to the full suite of proposals: https://www.mfe.govt.nz/consultation/action-for-healthy-waterways	Ministry for the Environment	Public feedback closed 31 October 2019.	HBRC, NCC and HDC lodged a joint submission. The cover letter and a copy of the full submission can be found at HBRC Submissions . Also refer to separate briefing paper update in agenda for Regional Planning Committee's 3 June 2020 meeting.

Received	Proposal	Agency	Status	Current Situation
21 Aug 2019	National Policy Statement – Urban Development (NPS-UD) MfE has notified a discussion draft which intends to enable opportunities for development in New Zealand's urban areas in a way that delivers quality urban environments for people, now and in the future. Link to the proposal and supporting material: https://www.mfe.govt.nz/consultations/nps-urbandevelopment	Ministry for the Environment	Public feedback closed 10 October 2019	HBRC, NCC, HDC and CHBDC made a joint submission which can be found at HBRC Submissions .
14 Aug 2019	National Policy Statement – Highly Productive Land (NPS-HPL) MPI and MfE have prepared a draft NPS to improve the way highly productive land is managed under the RMA. https://www.mpi.govt.nz/news-and-resources/consultations/proposed-national-policy-statement-for-highly-productive-land/	Ministry for Primary Industries	Public feedback closed 10 October 2019	HBRC, NCC, HDC and CHBDC made a joint submission which can be found at HBRC Submissions .
5 Aug 2019	Draft NZ Biodiversity Strategy DOC proposes a strategy to protect and restore our nature over the next 50 years. https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2019/proposal-for-new-zealands-next-biodiversity-strategy/	Department of Conservation	Public feedback closed 22 September 2019	Staff provided input into the submission made by the Local Government New Zealand Regional Sector Biodiversity Working Group.

Received	Proposal	Agency	Status	Current Situation
31 July 2019	Three Waters Policy Package The Cabinet announced its decisions on the proposed Three Waters policy package and has released a number of documents ahead to proposed legislative change: https://www.dia.govt.nz/Three-waters-review#Prog-Aug	Department of Internal Affairs	Information only	<p>Staff are maintaining a watch on Government's developments. Submissions on Taumata Arowai—the Water Services Regulator Bill closed on 4 March 2020.</p> <p>In February, Department of Internal Affairs announced that Mr Bill Bayfield (ex-ECAN CEO) had been appointed as the Establishment Chief Executive for Taumata Arowai, the new water services regulator.</p> <p>Meanwhile, the five Hawke's Bay councils continue work on our own Three Waters Review to investigate whether there are benefits for all of us in developing a HB region-wide solution to the way we manage drinking, waste and storm water services. This is our opportunity to design an affordable approach that works for all of Hawke's Bay. That review is looking at:</p> <ul style="list-style-type: none"> • Options for new service delivery arrangements for our three waters services in Hawke's Bay, • The scale of investment needed to deliver safe, reliable, resilient and affordable drinking, waste and storm water, and • The skills and expertise needed to deliver that. <p>A new website was launched in May. The new website - www.hb3waters.nz - provides information about the Review including its background, current status, anticipated timeframes and FAQs.</p>
24 July 2019	Comprehensive Review of the Resource Management Act MfE has released two Cabinet papers and a regulatory statement impact summary on the pending Stage One changes to the RMA. Link to the papers released: https://www.mfe.govt.nz/rma/improving-our-resource-management-system	Ministry for the Environment	Information only	<p>Staff are maintaining a watch on developments.</p> <p>In February, Group Manager Asset Management appeared before the Review Panel with a presentation on challenges being encountered with current system in terms of implementing the Clifton to Tangoio Coastal Hazards Management Strategy.</p>
16 July 2019	Action on Agricultural Emissions MfE proposes pricing agricultural emissions and options for managing emissions in the interim: https://www.mfe.govt.nz/consultation/action-agricultural-emissions	Ministry for the Environment	Public feedback closed 13 Aug 2019	Submission lodged, a copy can be found at HBRC Submissions

Received	Proposal	Agency	Status	Current Situation
4 July 2019	Local Government Funding and Finance The NZ Productivity Commission released a draft report on its inquiry into local government funding and financing, including consideration of cost pressures facing local government, funding and financing models available and related regulatory system matters. Link to the draft report: https://www.productivity.govt.nz/inquiries/local-government-funding-and-finance/	NZ Productivity Commission	Public feedback closed 29 Aug 2019	Submission lodged, a copy can be found at HBRC Submissions
June 2018	Climate Change Response (Zero Carbon) Amendment Bill The Bill proposes climate change targets for 2050, a Climate Change Commission and various assessments, plans and reporting requirements. https://www.mfe.govt.nz/node/24262	Ministry for the Environment	Submissions closed 16 July 2019	Submission lodged, a copy can be found at HBRC Submissions HBRC addressed Select Committee on 21 Aug 2019. The Climate Change Response (Zero Carbon) Amendment Act 2019 came into effect in November 2019.

TABLE 2: TERRITORIAL LOCAL AUTHORITY PROPOSALS

Received	TLA	Proposal	Applicant/ Agency	Status	Current Situation
March 2020	NCC	Napier City Council District Plan Review – Discussion Documents NCC released and sought public feedback on discussion documents relating to the following topics: 'Ecosystems and Indigenous Biodiversity', 'Natural Features and Landscapes', 'Built Heritage' and 'Greenfield Growth in the Hills'.	Napier City Council	Discussion documents released – public feedback closed 1 May 2020.	Submissions lodged separately on Ecosystems and Indigenous Biodiversity, and Greenfield Growth in the Hills. Copies can be found at HBRC Submissions .
Sept 2019	NCC	Stormwater Bylaw review	Napier City Council	Public feedback closed 11 October 2019.	Submission lodged, a copy can be found at HBRC Submissions . Staff presented at the hearing on 19 November 2019. NCC's Bylaw came into effect on 1 February 2020.

Received	TLA	Proposal	Applicant/ Agency	Status	Current Situation
Aug 2019	HDC	Seasonal Workers Accommodation Variation 7 HDC have notified Variation 7 to the proposed Hastings District Plan which relates to Seasonal Workers Accommodation.	Hastings District Council	Public feedback closed 27 September 2019.	<ul style="list-style-type: none"> Submission lodged, a copy can be found at HBRC Submissions. HDC issued its decisions on 30 April 2020. Council staff reviewed the decisions and were satisfied that HBRC's submission has been appropriately reflected so did not need to lodge an appeal.
May 2019	CHBDC	Central Hawke's Bay District Plan Review CHBDC are undertaking a full review of the District Plan. Notification of proposed review plan is anticipated in early 2020.	Central Hawke's Bay District Council	Draft review discussion document released – public feedback closed.	Feedback submitted. A copy of HBRC's submission can be found at HBRC Submissions .
Nov 2018	NCC	Napier City District Plan Review Review of District Plan has been initiated. Preliminary phase of review underway with notification of proposed reviewed plan in 2020/21.	Napier City Council	Draft review discussion document released- public feedback closed	<p>Previously...</p> <p>Napier City Council have publicly launched a review of their district plan. Public feedback was invited on the key themes about future planning needs and opportunities for Napier City. NCC are working through the public feedback it received to influence further drafting. HBRC's roles and activities will have interests in at least the following matters of the district plan review process: transport, natural hazards, water quantity, water quality, coastal environment, urban growth management, infrastructure planning, stormwater and wastewater management, biodiversity and open spaces.</p> <p>There will be further opportunities during NCC's District Plan Review process for HBRC to provide feedback and influence content.</p>
13 July 2016	HDC	Howard Street Rezoning Variation 3 Variation to rezone 21.2 hectares of land from its current Plains zone to General Residential zone in between Howard Street and Havelock Road.	Hastings District Council	HDC Decisions issued Subject to appeal, mediation ongoing	<p>Previously...</p> <ul style="list-style-type: none"> Following Environment Court-assisted mediation and discussions between engineering experts, parties have indicated resolution is achievable regarding land for stormwater management. Final documentation is being drafted by HDC for Court's approval. Parties to the appeal have been discussing recently completed stormwater engineering investigations and geotechnical assessments and how the District Plan rezoning appeal might now be resolved. HDC issued its decisions on 25th March 2017.
18 Jan 2016	WDC	Resource Consent Application Consent is sought to clear 248 hectares of Manuka and Kanuka on Part Umumanfo 2 Block on Kopuawhara Road, Mahia.	Applicant R & L Thompson Agent Insight Gisborne Ltd	Limited Notified WDC hearing pending	<p>Previously...</p> <ul style="list-style-type: none"> HBRC has opposed the application based on concerns relating to the loss and degradation of soil (erosion) and water quality. A copy of the submission can be found at HBRC Submissions. HBRC staff and applicants have held discussions about potential alternative clearance proposals.

Received	TLA	Proposal	Applicant/ Agency	Status	Current Situation
8 Nov 2013	HDC	Proposed Hastings District Plan Review of the Hastings District Plan in its entirety. Includes the harmonisation of district wide provisions between the Napier District Plan with the Hastings District Plan where relevant.	Hastings District Council	Notified HDC decisions issued, subject to appeals	Previously... <ul style="list-style-type: none"> Over 40 separate appeals were lodged against HDC's decisions by other groups and individuals. HBRC joined as a section 274 interested party to proceedings on eleven (11) of those appeals. All but one of those appeals has been resolved. That last one will be awaiting the appellant to prepare a draft 'structure plan' for their development area in Havelock North. HDC issued its decisions on 12 September 2015. Council staff reviewed the decisions and were satisfied that HBRC's submission has been appropriately reflected so did not need to lodge an appeal itself.

TABLE 3: OTHER PROPOSALS

Received	Proposal	Agency	Status	Current Situation
9 Dec 2017	HB Fish and Game Council's Draft Sports Fish and Game Management Plan A draft management plan under the Conservation Act to eventually replace the current 2005 Sports Fish and Game Management Plan for the HBFG region.	HB Fish and Game Council	Notified, Submissions closed. Hearing pending	Previously... Submission lodged. A copy of HBRC's submission can be found at HBRC Submissions .
24 July 2017	Application for Water Conservation Order (WCO) Application for a WCO for the Ngaruroro River & Clive River	Applicants NZ Fish & Game Council, HB Fish & Game Council; Whitewater NZ; Jet Boating NZ; Operation Patiki Ngāti Hori ki Kohupatiki Marae; Royal Forest & Bird Protection Society	Special Tribunal Recommendation Report Released.	<ul style="list-style-type: none"> 8 parties have lodged further proceedings with the Environment Court, so an inquiry will be held. Pre-hearing expert witness conferences were held in March regarding hydrology, water quality, avifauna, fish, and planning. Environment Court proceedings were paused during the Level 4 and Level 3 of COVID-19 response. A tentative date has been set for a hearing in early September 2020.

TABLE 4 - UPDATE OF CURRENTLY ACTIVE APPLICATIONS LODGED UNDER MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011 RELEVANT TO HAWKE'S BAY.

Iwi/Hapu/Whanau (updated 14.07.17)	High Court	Crown Engagement	Customary Marine Title	Protected Customary Right	HBRC to join & date	Other Notes	Area description
Poronia Hineana Te Rangī Whanau (C.Clarkson)	Yes CIV-2011-485-789		Yes (pending)	No	Yes	Council's evidence to be submitted 28 th May 2020.	Whangāehu in the north to Poroporo [in Horizons region] in the south, including Cape Turnagain out to 12NM limit.
Ngati Pahauwera	Yes CIV-2011-485-821		Yes (amending earlier appl'n)	Yes (amending earlier appl'n)	Yes 10.05.17	Claim area extended from Esk River to just south of Napier Port. Council evidence required to be filed by 22 December 2020.	Poututu Stream in the north to just south of Napier Port, out to 12NM limit.
Cletus Maanu Paul On behalf of all Maori	Yes CIV-2017-? Rotorua registry	Crown Engagement declined April 2017	Yes	Yes	TBC	28 May 2020 Wellington High Court, to decide whether Mr Paul's claim in relation to "[a]ll Māori not already represented in customary title proceedings under the Act ..." should be struck out.	"Entire area of Aotearoa New Zealand, including ... surrounding all islands and reefs..."
R.Dargaville for NZ Maori Council	Yes CIV-2017-404-538		Yes	Yes	Yes (18.05.17)	Hawke's Bay aspect of national application has been withdrawn therefore no longer relevant	Claim area running from Waimarama to Blackhead Point

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: DISCUSSION OF MINOR MATTERS NOT ON THE AGENDA

Item 16

Reason for Report

1. This document has been prepared to assist committee members note the Minor Items to be discussed as determined earlier in Agenda Item 5.

Item	Topic	Raised by
1.		
2.		
3.		