



Meeting of the Regional Planning Committee

LATE ITEMS

Date: Wednesday 3 June 2020
Time: 10.00am
Venue: Online by Zoom Invitation

Agenda

ITEM	TITLE	PAGE
Decision Items		
18.	Feedback from Tukituki Catchment Proposed Plan Change Pre-consultation	3

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 03 June 2020

Subject: FEEDBACK FROM TUKITUKI CATCHMENT PROPOSED PLAN CHANGE PRE-CONSULTATION

Item 18

Reason for Report

1. This is a supplementary report to the main item on the agenda 'Proposed Plan Change 6A: Tukituki Catchment – Table 5.9.1D'. It presents feedback received from pre-notification consultation on the draft of Proposed Plan Change 6A: Tukituki Catchment Table 5.9.1D. This report considers those responses received, addresses feedback from iwi authorities, and, in light of the recently announced reforms associated with the package of 'Actions for Healthy Waterways', reconsiders the pathway for notification.

Officers' Recommendations

2. Officers recommend that Council use the streamlined planning pathway to notify the proposed plan change to recalibrate Table 5.9.1D as a 'fit for now' solution to ensure the best available science (OverseerFM) is used to allocate nitrogen leaching fairly and transparently for consenting.
3. Further, officers consider it appropriate to note that Council will be reviewing nitrogen management provisions in the Hawke's Bay Regional Resource Management Plan (RRMP), which is due to commence in 2021. This will address the concerns of iwi authorities and stakeholders with respect to the wider issues around the management of nitrogen and give effect to the government's new requirements with respect to Actions for Healthy Waterways.

Executive Summary

4. Approximately 50 government agencies, local authorities, iwi authorities, stakeholders groups and the Tukituki Leaders Forum were consulted as part of pre-notification consultation undertaken in accordance with clause 3 of Schedule 1 Resource Management Act 1991 (RMA). The main report identifies who was contacted for feedback.
5. A total of 29 respondents provided feedback either through the online survey or by email response (31 responses were received in total, but two responses were duplicated in the online survey and by email).
6. Of the twenty-three respondents to the online survey and six additional respondents who replied by email, twenty-three agreed with the proposal (five of those were conditional support) and three disagreed with the proposal (one of those was conditional opposition). A further three respondents made comments about the proposal, neither in opposition nor in support.
7. In general, those supporting the proposed plan change recognised that it was necessary to recalibrate Table 5.9.1D because of the version changes to Overseer.
8. Most of those supporting the proposed plan change also identified the need to undertake a more comprehensive review of nitrogen management for the Tukituki Catchment.
9. Those opposing the proposed plan change generally wanted a review of nitrogen management to be undertaken instead.
10. In making the officer recommendation to proceed to notify the proposed plan change, staff recognise that this is a 'fit for now' solution to address an immediate need to ensure consistent application of OverseerFM for assessing Farm Environment Management

Plans and managing resource consenting processes. Staff recognise that there is a need to review nitrogen management beyond this technical fix.

11. The announcement from Government last Thursday regarding the Actions for Healthy Waterways Package noted a delay in introduction of legislative reform to enable the new freshwater management plan-making process. This means that there is still opportunity to apply to the Minister for the Environment to use the streamlined planning process for this plan change. This pathway is recommended because the proposal meets two of the relevant criteria set in section 80C RMA.

Background

12. For the background to this report, please refer to the main report to this Committee, 'Proposed Plan Change 6A: Tukituki Catchment Table 5.9.1D'.

Feedback

13. The main report notes that pre-notification consultation was being undertaken with some 50 people and organisations, with feedback closing on Friday 29 May 2020.
14. In addition to the online survey, two on-line Zoom meetings were organised for those 50 people and organisations being consulted. The first online meeting was held on Wednesday 27 May 2020, with a representative from one iwi authority attending. The second stakeholder online meeting was held on Friday 29 May 2020, with ten stakeholders attending.
15. A total of 29 responses were received, either through the online survey or by email response (31 responses were received in total, but two responses were duplicated in the online survey and by email).
16. Of the 23 respondents to the online survey and six additional respondents who replied by email, 23 agreed with the proposal (five of those were conditional support) and three opposed (one of those was conditional opposition). A further three respondents made comments about the proposal. Note that the response from Te Taiwhenua o Heretaunga is included in these figures.
17. A copy of the online survey results and all email responses is attachment 1 to this report.
18. Of those supporting the proposal, comments made related to:
 - 18.1. Maintaining relativity (comparing apples with apples)
 - 18.2. Providing more consistency and equity
 - 18.3. The old version of Overseer no longer being available
 - 18.4. A preference for using the streamlined planning process
 - 18.5. Use of the LUC system, including in relation to Overseer updates, or in opposition to its use in this way as a surrogate for natural capital
 - 18.6. Further information being available on the recalibration
 - 18.7. Use of an independent organisation to recalibrate the table
 - 18.8. Costs for all parties if there is opposition to the proposed recalibration
 - 18.9. Conditional support for a very narrow-based plan change.
19. Those supporting also requested:
 - 19.1. Addressing future version changes, including a mechanism to ensure relativity within the table when Overseer is improved into the future
 - 19.2. Recognition of the current government directed review of the use of Overseer and any guidance resulting in due course
 - 19.3. A review of the entire approach to managing water quality in the Tukituki as a priority, as LUC is not suitable or appropriate.

20. Of those opposing the proposal, including one iwi authority, comments made related to:
 - 20.1. Further clarification about the proposed change
 - 20.2. Further information about the elevation of nitrates in Central Hawke's Bay groundwater and the health risks and implications
 - 20.3. The need for a regional approach to nitrates management in ground and surface water, not just on a catchment by catchment basis
 - 20.4. The need to further consult before initiating a plan change to Table 5.9.1D
 - 20.5. The need to investigate the health risks of nitrate levels above 3.8mg/l
 - 20.6. The need to continue to implement the operative plan in the interim, including the requirement for resource consents.
21. Of those who did not state a position, comments were made in relation to:
 - 21.1. Having insufficient time to consider the proposal
 - 21.2. Needing more information about the need for the change, and the extent to which DIN in waterways needs to be reduced.
22. This summary of responses is being incorporated within the Section 32 Evaluation Report for the proposed plan change.

Actions for Healthy Waterways and RMA reforms

23. On Thursday 28 May, the Government announced the latest package of 'Actions for Healthy Waterways' (summarised in a separate Memo to the RPC 28 May 2020, also refer to <https://www.mfe.govt.nz/action-for-healthy-waterways>).
24. Of note for this proposal, the package includes a number of actions to reduce excess nitrogen in our waterways. The Minister for the Environment noted that increasing rates of nitrates in drinking water are a concern worldwide, and that the Ministry of Health is preparing a report due out later in the year. He also noted the ongoing work directed by the Government on the independent review on nutrient tracking technology, which looks at the use of Overseer (refer <https://www.mfe.govt.nz/fresh-water/freshwater-and-government/essential-freshwater-work-programme/independent-review>).
25. Reforms to the RMA, including to introduce the new freshwater planning process, are still being drafted. A date has not been set for the reintroduction of the Resource Management Amendment Bill.

Options Assessment

26. The RPC must now consider whether or not to notify the proposed plan change to recalibrate the nitrogen leaching rates in Table 5.9.1D.

Section 32 Evaluation

27. In light of feedback received, staff have reviewed the evaluation sections of the draft Section 32 Evaluation Report. Only minor changes to that initial assessment are proposed, better describing possible impacts and updating the report in light of the 'Actions for Healthy Waterways' package, as shown in Attachment 2.

Plan-making pathway

28. At the time of writing the main report, staff had anticipated that legislative reforms to the RMA, including the freshwater plan-making process, would be announced along with the government's decisions on the 'Actions for Healthy Waterways' programme. However, drafting is still in progress and there is no set date for when this legislation will be introduced to Parliament for its second and third readings. The consequence is that there is still a small window of opportunity to apply to the Minister for approval to use the streamlined planning process (SPP).

29. The use of this process was discussed at the March 2020 meeting of the RPC, though no formal decisions were made in this respect. A link to the SPP process is here: <https://www.mfe.govt.nz/sites/default/files/media/RMA/Final%20FlowchartDiagram%20Nov17.pdf>
30. As part of the 'fast fail' approach, staff have only held preliminary discussions with MfE officials. Ministry officials advised that the freshwater planning process must be used for any related plan change once the amended RMA is enacted. Until then, the streamlined planning process remains available.
31. Given that the opportunity to use the streamlined process remains, ahead of RMA reform, staff consider it is worth pursuing this pathway. The proposed plan change meets at least two of the relevant criteria:
- 31.1. As a matter of public policy, the preparation of a planning instrument is urgent (s80C(2)(b) RMA)
- 31.2. A plan or policy statement raises an issue that has resulted in unintended consequence (s80C(2)(d) RMA).
32. If this process is followed, the Council must apply in writing to the Minister requesting a directive to use the SPP. If the Minister approves use of the SPP process, he provides a Statement of Expectations and direction on what processes and procedures (such as reporting) are to be used. The Council must then follow those directions. The Minister must also give his approval at the end of the process, before the plan change can be made operative.
33. A brief evaluation of the two plan-making pathways for this proposed plan change is set out below:

Table 1: Evaluation of plan-making pathways

Matter	Option 1 Stream-lined planning process (Part 5 Schedule 1)	Option 2 Part 1 Schedule 1 planning process
Participation in plan-making process	Opportunity for anyone to make submissions and further submissions on notified proposed plan change (unless the Minister directs otherwise)	Opportunity for anyone to make submissions and further submissions on notified proposed plan change
Quality of decision-making	Submissions and hearing process, with accredited RMA hearing commissioners, in accordance with direction from the Minister	Submissions and hearing process with accredited RMA hearing commissioners
Right of appeal	No right of appeal to the Environment Court	Right of appeal to the Environment Court
Timeliness for plan decision-making	Enables a quality decision to be made and the change to be made operative in the shortest time.	Enables a quality decision to be made, but right of appeal risks delay before the change can be made operative
Use for consenting processes	Has legal effect once notified, but this is given limited weight until the decision is made	Has legal effect once notified, but this is given limited weight until the decision is made and any appeal is resolved
Cost	Costs are limited to the submission, hearing and deliberations processes	Costs include those for submissions, hearing and deliberations, but may increase sharply for all parties on appeal
Purpose of plan change	Achieves the purpose	Achieves the purpose if there are no appeals

34. While some additional time is required to secure the Minister's approval to use the SPP pathway, the previously proposed notification date of Saturday 27 June 2020 may be deferred. However, staff consider that the benefits of following a sound decision-making process as directed by the Minister, and a more timely decision to inform consenting processes, warrant any such delay.
35. Accordingly, staff recommend use of the streamlined planning process as it offers the best opportunity to deliver an operative plan change in the shortest possible time. This clearly achieves the purpose of the plan change and provides the a timely and cost-efficient way of addressing the unintended consequence to Table 5.9.1D arising from the change in Overseer versions.

Next Steps

36. Should the RPC recommend use of the SPP pathway, the following actions will be undertaken to progress this proposal:
 - 36.1. Apply to the Minister to use the SPP pathway
 - 36.2. Contact iwi authorities of the Tukituki Catchment to inform them of the recommendations made by the RPC, and request:
 - 36.2.1. Further feedback on the proposed plan change and pathway
 - 36.2.2. Nominations for a suitably qualified RMA accredited hearing commissioner for the hearings panel.
 - 36.3. Commission an independent agency to recalibrate Table 5.9.1D using data from the original 2012 table
 - 36.4. Report back to the Council with the decision of the Minister with respect to use of the SPP pathway
 - 36.5. Report back to the Council identifying how particular regard may be given to any further feedback received from the iwi authorities of the Tukituki Catchment
 - 36.6. Update the proposed plan change and Section 32 Evaluation Report accordingly
 - 36.7. Proceed to notify (or abandon) the proposed plan change according to the Council's decision in light of the above information
 - 36.8. Should the Minister not approve use of the SPP pathway, the opportunity to use the standard Schedule 1 Part 1 pathway remains available until the RMA reforms are enacted. In this situation, should the RPC wish to, they may resolve now to use the standard Part 1 Schedule 1 plan making process.
 - 36.9. Given that time is critical to this plan change, should there be a delay in receiving a response from the Minister, staff will report back to the August meeting of RPC to consider remaining options.
 - 36.10. Ensure the Proposed Long Term Plan includes resourcing to undertake the review of nutrient management with respect to land and water systems for the region, as is expected to be required by the National Policy Statement for Freshwater Management 2020, by 31 December 2024 (noting that this document is still to be finalised).

Response to iwi authorities concerns

37. Before notifying the proposed plan change, the Council must have particular regard to any advice received on the proposed change from iwi authorities consulted (Clause 4A (1)(b) Schedule 1 RMA) and must enable them time to consider the draft and provide advice (Clause 4A(2) Schedule 1 RMA).
38. Written feedback was received from one iwi authority (Te Taiwhenua o Heretaunga). The Chair of Heretaunga Tamatea Settlement Trust attended the online iwi authority meeting, where she gave her support to proceed with the plan change, while noting the diversity of opinions held within the Taiwhenua.

39. In response to the issues raised by Te Taiwhenua o Heretaunga (summarised at paragraphs 20-2 – 20.6 above):
 - 39.1. With respect to groundwater quality, staff scientists note that what appears to be an increasing trend, is actually an artefact of a large number of shallow bores that were added to the Ruataniwha monitoring network in recent years. The increased NO₃ concentrations observed in recent years reflect increased spatial coverage of the monitoring network and not a temporal trend.
 - 39.2. Further, a Ministry for Health report on the impacts of nitrogen in drinking water is due later this year, and Cabinet has requested a copy of that report to see if there are nitrate problems in aquifers.
 - 39.3. An independent report to recalibrate Table 5.9.1D will be commissioned, for presentation to the hearing commissioners. For the purposes of notifying the proposed recalibration of Table 5.9.1D, the RPC needs to be sufficiently satisfied with Dr Hanly's assessment that to all intents and purposes, the changes will be the same as those made to Horizon's One Plan
 - 39.4. A wider review of nitrate management will be required when the Tukituki Catchment provisions are reviewed and to give effect to the proposed National Policy Statement for Freshwater, signalled for 31 December 2024 in the recently released Government's 'Action for Healthy Waterways' programme.
40. This response to the feedback from iwi authorities is also being incorporated within the Section 32 Evaluation Report.

Decision Making Process

41. 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:
 - 41.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 41.2. The use of the special consultative procedure is not prescribed by legislation.
 - 41.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 41.4. The persons affected by this decision are those people and entities with an interest in freshwater management within the Tukituki Catchment.
 - 41.5. The Council must use the plan making processes prescribed in Schedule 1 RMA. Either the SPP process (set in Part 5 of Schedule 1) or the usual process (set out in Part 1 of Schedule 1) may be used until any further reform to the RMA. The proposed new freshwater planning process would only apply if this change is notified after the RMA reforms are enacted.

Recommendations

That the Regional Planning Committee:

1. Receives and considers the staff report on *Feedback from Tukituki Catchment Proposed Plan Change Pre-consultation*.
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.
3. Approves Proposed Plan Change 6A Tukituki Catchment – Table 5.9.1D for notification and the associated report, *Section 32 Evaluation of proposed plan change 6A Tukituki Catchment – Table 5.9.1D*.
4. Requests staff apply to the Minister for the Environment to use the streamlined planning

process.

5. As a default, should there no response from the Minister for the Environment by 15 July 2020, then approve the use of the Part 1 Schedule 1 RMA plan making process to enable a Council decision for the date of notification.
6. Requests staff inform all those who provided pre-notification feedback of their decision.
7. Requests staff contact iwi authorities of the Tukituki Catchment to nominate a suitably qualified and accredited RMA hearing commissioner.
8. Requests staff prepare a proposal to review nutrient management as part of the review of freshwater management provisions in the RRMP, with notification of the reviewed provisions to occur by 31 December 2024. Resourcing for this review will be included in the Proposed Long Term Plan 2021-2031.

Authored by:

Dale Meredith
SENIOR POLICY PLANNER

Ceri Edmonds
MANAGER POLICY AND PLANNING

Approved by:

Liz Lambert
GROUP MANAGER REGULATION

Attachment/s

- [↓ 1](#) Feedback Received from Pre-notification Consultation
- [↓ 2](#) Amended Plan Change 6A Section 32 Report Extract

SUMMARY OF RESPONSES TO ONLINE SURVEY 18 – 29 MAY 2020

Ref	Response	Conditions & Comments made by Respondent
1	Agree	
2	Agree	The new plan must enable the table to be automatically updated as new versions of Overseer are released, otherwise there is always a mis-match between the current science relating to the farm system and nutrient movement and the Plan
3	Agree	As far I am concerned it is only logical that as the science behind Nitrogen leach improves that we should utilize it for the benefit of all. So I am pleased that the Regional Council is looking at using OverseerFM with the matching LUC Nitrogen Leaching Rates rather than the 2012 figures that are outdated. It would be good to have it processed as soon as possible for the farmers currently going through the consenting process.
5	Agree	This would appear to be the most practical and commonsense way of overcoming the obvious and unintended issues that have developed since PC6 was put into motion. Improved water quality is a common goal shared by the vast majority of farmers, however, there is a risk that much of the good, voluntary work (critical to achieving this goal) will stall if the vast majority of these farmers are arbitrarily by way of an Overseer version change, pushed beyond 'compliance' level. The fact that each sub-catchment is being managed separately for consenting based on actual water monitoring should give enough confidence that the collective catchment can achieve its water quality targets over time. These targets will be achievable if the goodwill of farmers can be once again harnessed alongside the regulatory framework. This, I believe, is a step in the right direction.
7	Agree	This just proves how out of date the FM model is compared to the original version of 5.3. The is a huge leap in faith
9	Agree	Farmers began implementing their mitigations several years ago, based on the N calculated in the previous version of Overseer. If the N tables are not recalibrated then those who have put in years of investment and activity based on the old numbers will be unfairly penalised. This is a paper-based issue that does not improve environmental outcomes, it only incurs significant time and cost
13	Agree	
15	Agree	Support the proposed plan change but more information would be good regarding How the new figures were calculated, what will happen when versions of Overseer change (OverseerFM is the interface of Overseer, not the version), will this have any impacts on other parts of the Tukituki Plan and how likely is the plan change to go ahead, given Horizons also recently tried to update their table.
18	Agree	Nil
19	Agree	Table needs to be continually updated every time Overseer is.
20	Agree	
14	Agree	Agree - It is important to note it is likely that Overseer will continue to be refined as new research emerges. Ongoing refinement of Overseer may result in these tables continuing to change.

Ref	Response	Conditions & Comments made by Respondent
21	Agree	This would appear to be the most practical and commonsense way of overcoming the obvious and unintended issues that have developed since PC6 was put into motion. Improved water quality is a common goal shared by the vast majority of farmers, however, there is a risk that much of the good, voluntary work (critical to achieving this goal) will stall if the vast majority of these farmers are arbitrarily by way of an Overseer version change, pushed beyond 'compliance' level. The fact that each sub-catchment is being managed separately for consenting based on actual water monitoring should give enough confidence that the collective catchment can achieve its water quality targets over time. These targets will be achievable if the goodwill of farmers can be once again harnessed alongside the regulatory framework. This, I believe, is a step in the right direction.
23	Agree	The new plan must enable the table to be automatically updated as new versions of Overseer are released, otherwise there is always a mis-match between the current science relating to the farm system and nutrient movement and the Plan
11	Agree with conditions	I agree the table should be updated to reflect the latest Overseer estimates, and the update reflects a change in scientific understanding and not a change in predicted environmental effects. However, I disagree with the way the thresholds are used in the plan. The method of comparing average leaching from farms and enterprises favors large farms, where small intense blocks are averaged out against larger extensive areas. This disadvantages small farms and is not effect based. A load of N discharged is what is correlated with effects and load should be used as part of the threshold. Further, N is not a proxy for water quality effects for all land uses, perhaps only for dairy. Some land uses have high sediment losses and relatively low N losses, others have relatively high N losses and low e.coli losses. The process should consider the contaminant of concern in the receiving environment when compared with the values. Further, the sub-catchment method doesn't consider the catchment as a whole and the load, discharged from upper catchments into lower reaches, where the cumulative effect of loads (of nutrients, sediment, and pathogens) can have impacts that are not accounted for in this approach. Also, the tables are not limits that meet the requirement of the NPSFM. They were adopted through the decision without analysis to determine whether they would be effective at achieving outcomes to support the community freshwater values, or whether they are an effective and efficient method of supporting the social, cultural, economic, and environmental outcomes for achieving land-based values within the catchment. (Duplicate of email response – Horticulture NZ)
16	Agree with conditions	We have been using Overseer originally with the assistance of Dairy NZ from the outset and have been shocked at how extremely variable over the years and Overseer versions the figures have been regards leaching of Nitrogen and thus been extremely concerned at these being used as a regulatory tool today. It is obvious a formula change is needed to meet the intention as stated by the Tukituki Board of enquiry Thankyou Rosalie Galloway
17	Agree with conditions	How will this be future proofed? I.e. The update to the table will bring things aligned with the current version of OverseerFM but will future updates to Overseer likely to occur at least monthly, the table will quickly become outdated again.

Ref	Response	Conditions & Comments made by Respondent
22	Agree with conditions	I agree the table should be updated to reflect the latest Overseer estimates, and the update reflects a change in scientific understanding and not a change in predicted environmental effects. However, I disagree with the way the thresholds are used in the plan. The method of comparing average leaching from farms and enterprises favors large farms, where small intense blocks are averaged out against larger extensive areas. This disadvantages small farms and is not effect based. A load of N discharged is what is correlated with effects and load should be used as part of the threshold. Further, N is not a proxy for water quality effects for all land uses, perhaps only for dairy. Some land uses have high sediment losses and relatively low N losses, others have relatively high N losses and low e.coli losses. The process should consider the contaminant of concern in the receiving environment when compared with the values. Further, the sub-catchment method doesn't consider the catchment as a whole and the load, discharged from upper catchments into lower reaches, where the cumulative effect of loads (of nutrients, sediment, and pathogens) can have impacts that are not accounted for in this approach. Also, the tables are not limits that meet the requirement of the NPSFM. They were adopted through the decision without analysis to determine whether they would be effective at achieving outcomes to support the community freshwater values, or whether they are an effective and efficient method of supporting the social, cultural, economic, and environmental outcomes for achieving land-based values within the catchment.
4	Disagree	My response has been forwarded to Dale Meridith HBRC
8	Disagree with conditions	I require further clarification before I would support your suggestion.
6		it depends how much of a change the review makes. Somehow the HBRC needs to reduce DIN in water ways. If everyone is under the allowances then there will be no change required in farming practises and thus no change in the DIN levels. Those farmers with high N losses need to be required to make changes. if the stream DIN levels do not get reduced the HBRC will be required to alter the rules/allocation so that farmers losses are lowered.
10		The time allowed has been too short to have a proper look at the proposal, and to discuss with others in our networks that might be affected. I do not yet feel we have enough information to make an educated decision.
12		Reviewing the table on its own with no ability to comment on the overall approach and Policy TT4, is not ideal if the plan change is opposed in submissions. By that time it will be too late for DairyNZ to request a wider review of policies and rules, as done in Horizons PC2. Policy TT4 as written does not give adequate guidance for dairy farmers who exceed the N leaching table. Therefore our conditional support is based on all parties agreeing with a very narrow-based plan change, and the entire Tukituki approach to managing water quality is reviewed as a priority. A full review under NPS-FM should start from scratch to review of how instream nutrient concentrations relate to actions on the land, and which policy regulatory tools could be used. In DairyNZ's view, LUC is not suitable or appropriate. (Duplicate of email response - Dairy NZ)

Email Response 1

From: Matthew & Paula
Sent: Friday, 29 May 2020 7:13 PM
To: Dale Meredith <Dale.Meredith@hbrc.govt.nz>
Subject: Proposed update to the LUC

Hi Dale

Thanks for giving the HBDFA a chance to be part of the meeting this morning to go through the proposed undated LUC table and PC6A recommendations. Understanding that the current environment is making things a little challenging I feel the timeframe for this is a little rushed as at our previous meetings on this subject of aligning the updated scientific LUC figures with OverseerFM were dismissed as not a possibility makes me a little concerned.

We do support your proposed update of table 5.9.1D

Thank you again
 Matt

Matthew & Paula von Dadelszen

Email Response 2

From: Paul Le Miere <plemiere@fedfarm.org.nz>
Sent: Friday, 29 May 2020 4:47 PM
To: Liz Lambert <liz@hbrc.govt.nz>; Dale Meredith <Dale.Meredith@hbrc.govt.nz>
Subject: Federated Farmers submission to the Draft of the Proposed Plan Change: Tukituki Catchment Table 5.9.1D

Hi Dale and Liz,

Please find attached Federated Farmers submission to the draft Proposed Plan Change: Tukituki Catchment Table 5.9.1D

Thank you for the opportunity to submit.

We would like to engage with you about the relativity mechanism we think should be in the plan change as we have some suggestions given our experience from Taupo PC2 and Horizons PC2.

Regards,
 Paul

Dr PAUL LE MIERE
 REGIONAL POLICY MANAGER, NORTH ISLAND
 Federated Farmers of New Zealand
 M 027 617 1796
 E plemiere@fedfarm.org.nz

P THINK BEFORE YOU PRINT



Submission to the
 Draft of the Propose

Email Response 3

From: Richard Allen (Sustainable Dairying Specialist) <Richard.Allen2@fonterra.com>
Sent: Friday, 29 May 2020 12:39 PM
To: Dale Meredith <Dale.Meredith@hbrc.govt.nz>
Subject: Fonterra response re 6A

Hi Dale,

Thank you very much for the information provided to us this morning and for the opportunity to provide comment on the interim technical fix.

I think it is likely we would be generally supportive of what HBRC are trying to achieve with the "fit for now" proposal, however there are a couple of issues I think do need to be carefully considered going in to the plan change process.

- Fonterra fundamentally disagrees with the use of LUC as a proxy for natural capital when the contaminant being addressed is nitrogen. I understand this is well beyond the scope of what you are considering but any support for updating the table will be explicitly limited to it being interim and for the Overseer numbers to be used as an activity status threshold – not as a hard compliance point number in a consent.
- If the Overseer number is written in to the consent as a compliance point it is clear that the version change problem you are trying to address becomes an ongoing issue as a farm could become non compliant without changing practice.
- There are reasonably straight forward approaches that could be used to ensure ongoing version changes are accounted for at farm level. The reference file approach of Rotorua for example, or the simple base dataset approach of the notified Taupo change.

As HBRC have clearly recognised that the thresholds, as currently appearing in the table, are seriously flawed – would you expect to still apply these to an application received before any plan change became operative (or indeed if you didn't progress this change)?

Thanks again,
Richard

Richard Allen
Manager, Environmental Policy

Fonterra Co-operative Group Limited
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19 Home Straight, Te Rapa
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Email Response 4

From: Lindsay Fung <lindsay.fung@deernz.org>
Sent: Friday, 29 May 2020 12:05 PM
To: Dale Meredith <Dale.Meredith@hbrc.govt.nz>
Cc: Matt von Dadelszen <matvond@farmside.co.nz>
Subject: Proposed Tukituki Plan Change PC6A

Hi Dale

Thanks for the earlier email letter and video meeting this morning to go through the updated table and PC6A.

DINZ supports your proposed update of Table 5.9.1D.

Kind regards
 Lindsay

Lindsay Fung
 Environmental Stewardship Manager



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Email Response 5

From: Alexandra Bartlett <Alexandra.Bartlett@ttoh.iwi.nz>
Sent: Wednesday, 27 May 2020 3:03 PM
To: Dale Meredith <Dale.Meredith@hbrc.govt.nz>
Subject: TToH Reponse to HBRC Proposal Plan Change Tukituki Catchment Table 5.91D

Tēnā koe Dale,

Please find attached a letter and response to the HBRC proposal plan change Tukituki Catchment Table 5.91D, on behalf of Marei Apatu, Te Kaihautū Te Manaaki Taiao of Te Taiwhenua o Heretaunga.

Nāku noa, nā

Alexandra (Lana) Bartlett
 EA to Te Kaihautū
 Te Manaaki Taiao
 Chief Executive Office

Te Taiwhenua o Heretaunga
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Response to HBRC
 Letter - Nitrogen lea

Email Response 6

From: Tom Kay <T.Kay@forestandbird.org.nz>

Sent: Wednesday, 27 May 2020 10:24 AM

To: Dale Meredith <Dale.Meredith@hbrc.govt.nz>

Cc: Peter Anderson <P.Anderson@forestandbird.org.nz>

Subject: RE: LETTER - PROPOSED PLAN CHANGE: TUKITUKI CATCHMENT TABLE 5.9.1D

Kia ora Dale,

In response to your letter titled "PROPOSED PLAN CHANGE: TUKITUKI CATCHMENT TABLE 5.9.1D":

Forest & Bird support the proposal to recalibrate Table 5.9.1D of the Tukituki Plan Change 6 using OverseerFM.

We expect this update would be undertaken by an independent organisation (such as a University or agResearch). We also anticipate the implications of (a) the current Government-directed review of Overseer and (b) any national guidance issued on the use of Overseer in regional planning will be considered in relation to the Tukituki plan change in due course.

Ngā mihi,

Tom Kay

Freshwater Advocate

Royal Forest and Bird Protection Society of New Zealand Inc.

M 022 183 2729

Email Response 7

From: Justine Young <Justine.Young@dairynz.co.nz>

Sent: Tuesday, 26 May 2020 12:11 PM

To: Monique Thomsen <Monique.Thomsen@hbrc.govt.nz>; Dale Meredith <Dale.Meredith@hbrc.govt.nz>

Cc: Adam Duker <Adam.Duker@dairynz.co.nz>; Richard Allen <richard.allen2@fonterra.com>; Matt Highway <Matt.Highway@dairynz.co.nz>

Subject: plan change for TUKITUKI CATCHMENT TABLE 5.9.1D

Hello Dale and Monique, cc'ed to Adam, Richard, Matt

Adam will attend the meeting, and with the local Fonterra expert's help, bring some info about likely impact on dairy farmers of the update in the Table 5.9.1D.

I hope the meeting goes well, good idea to test your assumptions and ideas, thanks for including DairyNZ.

I am sure you have already thought through that even if people at the meeting are generally in support on the day, they may still submit in opposition to the plan change. Therefore, you have some big assumptions in your s32 assessment "Minimal impact if there is full support for making this change" Also, do I understand right that the 'costs' referred to in the letter Table 1 s32 evaluation summary, are only costs from the council's perspective? I think Option 1 'recalibrate only' if there are submissions in opposition, will be costly for all parties.

Comments in the survey

Support recalibrate the table, with conditions

Reviewing the table on its own with no ability to comment on the overall approach and Policy TT4, is not ideal if the plan change is opposed in submissions. By that time it will be too late for DairyNZ to request a wider review of policies and rules, as done in Horizons PC2. Policy TT4 as written does not give adequate guidance for dairy farmers who exceed the N leaching table. Therefore our conditional support is based on all parties agreeing with a very narrow-based plan change, and the entire Tukituki approach to managing water quality is reviewed as a priority.

A full review under NPS-FM should start from scratch to review of how instream nutrient concentrations relate to actions on the land, and which policy regulatory tools could be used. In DairyNZ's view, LUC is not suitable or appropriate.

Justine Young

Senior Policy Advisor



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(Also response in online survey)

Email response 8

From: Michelle Sands <Michelle.Sands@hortnz.co.nz>

Sent: Tuesday, 19 May 2020 9:54 AM

To: Monique Thomsen <Monique.Thomsen@hbrc.govt.nz>

Subject: RE: LETTER - PROPOSED PLAN CHANGE: TUKITUKI CATCHMENT TABLE 5.9.1D

Hi Monique,

I replied to the survey. HortNZ does agree with the update of the table to reflect the latest version of Overseer, and we suggest given the fluidity of predictions with Overseer, the update is linked to the Overseer version.

However, we disagree with the way the table is used in the Plan for a number of reasons:

- The use of leaching concentration averaged across farms, favours large farms and is not effects based.
- Load of contaminants discharged is what is linked with effects and should form part of the assessment
- Nitrogen leaching concentration is not a proxy for water quality effects for most landuses, perhaps just Dairy. Some land uses have high sediment losses and low nitrogen losses, others have higher nitrogen losses and low pathogens. An approach where the limits are linked to achieving outcomes that reflect values is more appropriate.
- The sub catchment approach does not account for the cumulative impact on the lower river and estuary of loads discharged from upper catchment
- The method does not meet the requirements of the NPSFM, the thresholds are not limits, and they are not linked to achieving outcomes that reflect freshwater values.

Michelle Sands

Manager – Environment | [Horticulture New Zealand](https://www.horticulture.co.nz)

P: 04 470 5664 | **M:** 021 610 653

(Also response in online survey)

AMENDED EXTRACT FROM 'SECTION 32 EVALUATION OF PROPOSED PLAN CHANGE 6A TUKITUKI CATCHMENT – TABLE 5.9.1D' - 1 JUNE 2020

(amended pages 10-15, from paragraph 44)

EVALUATION OF OPTIONS

The table below provides a summarised evaluation of each option, in accordance with Section 32 RMA.

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 <u>for all parties</u>	+++ 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, <u>with all applications for consent using the same process for estimating nitrogen leaching from each farm</u>	-- Mismatch between outputs from the 2 versions of Overseer, <u>making it difficult to compare nitrogen leaching between farms and allocate fairly through consents</u>	+++ Enables the best current tools to be used
Impact on actual N leaching	No difference to status quo <u>as Overseer only estimates leaching below the root zone</u>	No difference to status quo <u>as Overseer only estimates leaching below the root zone</u>	+++ 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

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
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 Any future change to Overseer will still require another plan change - this is a 'fit for now' fix and is not 'fit for future'	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	- - - 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. 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. If there are further changes made to Overseer, the version problem must still be addressed. 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 the solution sought by making the technical fix</p>	<p>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</p>	<p>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</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. 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>

Evaluation Matter	1: Recalibrate only	2: Do nothing	3: Review N leaching
Effectiveness	Effective in that: <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 	Less effective if land users do not supply N leaching data at the same time, resulting in delay in calculating catchment N loads	Ineffective in addressing the current round of consents Effective in the longer term, for re-consenting in future

Preferred option

1. 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:
 - 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 which applied 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.

Risk of preferred option and mitigation

2. 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.
3. The opportunity to use the streamlined planning process remains in the short term, ahead of reforms to freshwater management process signalled in the Resource Management Amendment Bill 2019. This option ensures a sound process to be directed by the Minister of the Environment, while removing the risk of costs and delay inherent with any appeal to the Environment Court.
4. 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.
5. 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).
6. 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 (i.e. Option 3). The Government's recently announced package, 'Actions for Healthy Waterways' identifies their review on nutrient management, including the use of Overseer, is ongoing. Further, freshwater management provisions in regional plans are signalled to require review, with reviewed plans to be notified by 31 December 2024.

7. — 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 will be required by section 79 of the RMA.

Item 18

Attachment 2

Item 17

Attachment 1