SOUTH COASTAL CANTERBURY SUB-REGION (PLAN CHANGE 3)

Overview

South Coastal Canterbury is split into three areas for the purposes of water quality management.

- Northern Streams Area - "Orange" where water quality outcomes are considered to be at risk of not being met
- Waihao-Wainono Area - "Red" where water quality outcomes are not being met (Wainono Lagoon is hypertrophic)
- Morven-Sinclairs area - "Green", where water quality outcomes are being met.

The Northern Streams Area and the Waihao-Wainono Area include flat coastal land, rolling downlands and steep country in the Hunter Hills to the west. The steeper hill areas (greater than approximately 15-degree slope) have been defined as "Hill sub-area". The lower slopes and plains are defined as the "Plains sub-area". The Hill and Plains sub-areas feature in the PC3 nutrient management rules.

The soils are now classified in the Planning Maps as "extremely light", "shallower", "wetter", "deeper" and "hill" soils with "extremely light" soils.

GMP vs Good Farm Practice

The panel have distinguished GMP from Good Farm Practice as set out in Schedule 24B of this sub-regional plan.

[121] The nomenclature 'Good Management Practice' (GMP) was used extensively in the Zone Committee documentation and later in the NARG report. It was also used extensively in the reports and in the evidence and submissions that were presented to the Panel during the hearing process. Good Management Practice (GMP) has since been identified as a specific method by the Council in proposed Plan Change 5 to the LWRP. We thus propose to use a more general term in this narrative, namely ***good farm practice****. In the notified provisions of PC3,* ***good farm practice*** *is as set out in proposed Schedule 24b of the plan change.*

HortNZ and other submitters requested withdrawal, or at least a pause, to the nutrient management provisions of PC3 until PC5 is completed. This was not supported in the decision for reasons including:

a) PC5 (Nutrient Management) is not intended to deliver on the ZIP Addendum's recommendations for nutrient management in South Coastal Canterbury;

b) PC5 would not be a good fit for PC3's specific purposes – in particular it does not provide a specific method to calculate the maximum caps and flexibility caps, which are a critical component of the PC3 solution package to enable development while achieving fresh water objectives; and
c) the momentum established through the Zone Committee process would be lost if PC3 was reconfigured at this late stage of the plan change process.

The overarching expectation in PC3 is that all farming practices will operate at good farm practice (or better), which has been described in numeric terms for nitrogen leaching and in narrative form for other contaminants.

Nitrogen Limits

Annual nitrogen load limits (tonnes per year) are set for land use activities and discharges in defined catchments; the Hunter Downs and Waihao Downs Irrigation Schemes; and for urban and industrial discharges. PC3 also introduces farm property scale nitrogen discharge allowance limits in kilograms per hectare per year that provide greater clarity around what is required by each individual property owner in order to meet the total catchment load limits and collectively achieve the outcomes those limits are designed to support.

In the Waihao-Wainono Plains and Northern Streams Plains sub-areas, this nitrogen load is allocated to individual properties using an allocation framework developed with local farmers. This comprises soil based maximum caps (20, 25 and 35 kgN/ha/yr, depending on soil type) and a lower flexibility cap to allow some room for farms with low nitrogen leaching losses to change land use and develop their businesses. It is proposed that there would be an increase in the flexibility cap from 15 up to 17kgN/ha/yr, but the increase would be contingent upon maximum caps and the freshwater outcomes for rivers and Wainono Lagoon being met.

In defined Hill sub-areas the flexibility cap is kept to a relatively low 5kgN/ha/yr to avoid unsustainable levels of development in these sensitive areas. This recognises that less intensive land use is possible here.

The nitrogen limits (in kgN/ha/yr) were set using OVERSEER®.

Farming activities are prohibited or are required to obtain resource consent if their nitrogen loss calculation exceeds:
(a) the greater of their nitrogen baseline or flexibility cap for the respective area; or
(b) if they exceed the maximum cap.

Farming activities also require resource consent if they wish to form part of a Nutrient User Group or Farming Enterprise.

Those farming activities that require a resource consent must prepare and submit a Farm Environment Plan (FEP) with their consent application. If a farming activity is permitted under the rules the farming activity must comply with a new schedule of basic **good farm practices** (Schedule 24b).

Plan Introduction

A number of submitters including HortNZ sought amendments to improve the wording or to recognise additional values within the catchments, including Wainono Lagoon, the Waihao Box, the importance of agriculture, and the protection of the Canterbury mudfish population.

A new paragraph was added as follows:

> *That part of the Lower Waitaki that is within South Coastal Canterbury and that is addressed in Section 15A of the Plan includes a diverse range of farming, industrial and township based activities. The area is of significant economic, social and cultural importance to the wider Canterbury and Otago Regions.*
>
> *South Coastal Canterbury is an important area for agriculture and food production which provides significant employment, both on farm and in processing and service industries.*

Good outcome here with recognition of food production and processing values.

Fresh water outcomes and limits

Plan Change 3 contains two tables of freshwater outcomes: Table 15(a) lists outcomes to be fully met by 2030 for rivers and streams, and Table 15(b) lists those for coastal lakes (specifically Wainono Lagoon).

The planning mechanisms to achieve the outcomes is addressed below.

Submitters raised concern that the thresholds set for indicators in the tables, including the risk that some are so specific that a single breach would effectively mean the outcomes were deemed not to have been achieved. The panel consider the Council should take a pragmatic and permissive approach rather than a strict interpretation as to whether the overall outcomes are being achieved.

The direction to Council to take pragmatic and permissive approach rather than strict interpretation is a good outcome here and useful for other regions (the issue has arisen in Gisborne).

HortNZ queried whether the freshwater outcomes are to be considered 'freshwater objectives' under the NPSFM. The decision confirms they are and agrees with an amendment to make this clear.

HortNZ sought clarification whether the values in Table 15(a) and (b) are intended as targets under the NPSFM. Based on the definitions in the NPSFM, the decision confirms the numbers in Tables 15(a) and (b) to be targets if that threshold has been breached, otherwise they can be considered limits.

Nutrient, sediment and microbial contaminants

In order to achieve the PC3 outcomes (Tables 15(a) and 15(b)), the following concepts were developed:

- Catchment load;
- Nitrogen baseline;
- Nitrogen loss calculation;

- Maximum cap;
- Flexibility cap.

Catchment load is the annual nitrogen loss (tonnes/year) reaching the lowest reaches of each surface water catchment, reflected in Tables 15(o) and 15(p).

Nitrogen baseline is the calculated nitrogen loss based on what a particular farmer was doing in the 2009-2013 period. averaged over the period and expressed in kg/ha/annum.

The nitrogen loss calculation is the calculated nitrogen loss based on what a particular farmer is doing now using a four-year rolling average over the most recent 4 year period.

The maximum caps set limits, which vary according to the soil composition shown on the Planning Maps comprising shallower soils, deeper soils or wetter soils. Farmers who exceed the limits would be prohibited or required to get resource consent and reduce their nitrogen discharges through time. This in turn would generate nitrogen gains or headroom to redistribute to low emitters.

The flexibility caps set limits which vary according to the respective areas (Northern Streams; Waihao-Wainono and sub-areas (Plains and Hill). Farmers that are below the limits set by the flexibility caps for their area are able to increase their nitrogen loss calculation up to the flexibility cap as a permitted activity. If their nitrogen baseline is higher than the capped limit, then they can stay at that limit as a permitted activity. In other words, there is no requirement to come down to flexibility caps.

The concepts work together for farming activities on properties greater than 5ha as follows:

- everyone starts at their 2009-2013 “Nitrogen Baseline” as per the LWRP;
- everyone is to be at least at good farm practice for their baseline land use (intent was to use the MGM numbers – now it is the practices in Schedule 24b);
- additional nitrogen allocation for consented irrigation schemes – members of the scheme use this to increase above their nitrogen baseline;
- existing high emitters reduce through time to “maximum caps”;
- low emitters can intensify up to “flexibility caps”;
- flexibility caps in the Plains sub-area can increase through time up to 17kgN/ha/yr, provided water quality outcomes are achieved and farming reflects good farm practices.

The decision confirms the above framework and considers the policy response to achieve it is the most appropriate to give effect to the objectives of the LWRP and the relevant statutory instruments.

The proposed Nutrient Management rule framework

During the course of the hearing there was much discussion about the fundamental concepts and how they should be implemented through the Rules. There was considerable divergence of views as between the parties and whether the Rules, as proposed in the s42A Report, reflected the outcomes arrived at by the collaborative Zone Committee and NARG processes. This prompted the panel to set in motion a continuation of the collaborative process during the hearing, resulting in caucusing and iterative changes to the proposed nutrient provisions as set out in the notified version of PC3.

Following planning/expert caucusing and a judicial conference, the panel issued Minute 7 that required filing of another caucusing statement to address:

a) *the planning caucusing group are to continue with preparing draft provisions addressing the issue of the plan complexity in accordance with their caucusing statement dated 9 December 2015;*
b) *the planning caucusing group, in consultation with the technical caucusing group, are to prepare draft provisions (Rules) to accommodate updated versions of OVERSEER®;*
c) *the draft provisions are to address the following scenarios/options:*
    i. *the Council's current version (s42A Report version) of the nutrient management provisions (Rules) of the Plan Change in a narrative form, as per the planning caucusing report; and*
    ii. *the Council's then-current version of the nutrient management provisions (Rules) of the Plan Change in a narrative form as per the alternative option put forward at caucusing, namely to amend the Plan Change to make provision for:*
        - *low emitters (outside Morven-Sinclairs and the Hill sub-area) to increase their flexibility caps from 10kgN/ha/yr to 15kgN/ha/yr, as a permitted activity subject to good farm practice occurring immediately – this is to implement the option to address the equity concerns raised by the submitters; and*
        - *changing the activity status from prohibited to non-complying where the greater of the nitrogen baseline or the flexibility caps is exceeded;*
d) *the technical lead for the Council, Mr Norton, was directed to provide to the Panel a statement of evidence setting out the environmental consequences, including the recalculated flexibility block and associated assumptions and risks, in the event the Plan Change is amended as set out in (c)(ii) above to address the equity concerns.*

As a result of the caucusing directed by the panel and the associated technical and planning caucus reports, a number of the outstanding issues relating to the nutrient management provisions were refined. The Council officers responded by adopting in their Reply many of the recommendations that came out of the process, subject to some adjustment to reflect their technical reports and additional planning analysis

The main matters still in contention, and requiring determination by the panel were:

(a) the complexity of the plan provisions;
(b) equity between low and high emitters;
(c) prohibited activity status of exceeding the nitrogen baseline or flexibility cap;
(d) the planning framework to accommodate updated nitrogen limits following changes to OVERSEER®; (e) irrigation scheme loads as set out in Table 15(p);
(f) irrigation scheme, nutrient user groups and farming enterprises;
(g) incidental discharges; and
(h) industrial and trade waste – substitution rule as requested by Fonterra.

Complexity of plan provisions

In response to Minute 2 and Minute 7, a number of planners representing submitters and the Council caucused in an endeavour to simplify the plan provisions. The caucus group agreed to focus their caucusing on the nutrient management provisions.

The following amendments were recommended and adopted in the decisions version:

a) divide Rule 15.5.2 as notified into five area-specific rules, and include the relevant flexibility and maximum caps within the text of each Rule;
b) as a consequence of step 1, ((a) above), delete Table 15(m) (flexibility caps) and Table 15(n) (maximum caps);
c) as a result of deleting Tables 15(m) and 15(n), amend the definitions of flexibility cap and maximum cap; and
d) include a new definition of "Individual Farming Activity" to remove the repetition of the "exclusions" from Rules 15.5.2 – 15.5.5.

A a new Rule (15.5.3A) included to provide for any lawful increase above the nitrogen baseline or flexibility cap (whichever is the greater). This rule would enable land users, who either increased above their baseline as a permitted activity under the proposed LWRP, or held an existing water permit that has a nitrogen-loss limit, to continue as a permitted activity.

The simplified provisions are an improvement to the provisions as notified, and would provide clarity to enable the farmers in the respective catchment areas to identify the requirements to comply with permitted activity status.

However as noted by the panel in their decision *"Notwithstanding the commendable efforts made by the caucusing group, the land use nutrient management provisions remain quite complex."*

Equity as between low and high emitters

Many low emitters expressed their frustration at what they considered to be an inequitable situation as between them and the high emitters. They considered they were being treated unjustly by being confined to relatively low flexibility caps compared to the relatively high maximum cap limits that applied to the higher emitters.

The nutrient provisions as notified set a flexibility cap of 10kgN/ha/yr for the Waihao Wainono Plains sub-area prior to augmentation and 5kgN/ha/yr for the Hill sub-area. The Low Emitters Group, Beef+Lamb NZ, **Horticulture New Zealand** and a number of individual submitters considered these flexibility caps to be particularly low as it would limit their ability to respond to market conditions and reduce confidence for further on-farm investment.

The decision confirms that additional flexibility be enabled in the Waihao-Wainono Plains sub-area enabling up to 15kgN/ha/yr as a permitted activity in that area, because the effect on the total catchment load would be relatively insignificant. Augmentation has been removed as a trigger for access to a higher flexibility cap for the Waihao-Wainono Plains sub-area.

Prohibited activity status of exceeding the nitrogen baseline or flexibility cap

A number of submitters **(including HortNZ)** raised concerns regarding the prohibited activity status afforded to farming activities that exceed either their nitrogen baseline or flexibility cap (whichever is the greater) for the Waihao-Wainono Plains and Hill sub-areas.

With the increase to the flexibility cap to 15kgN/ha/yr prior to augmentation, and the environmental risks associated with further increases in nitrogen losses across the Waihao-Wainono Plains and Hill subareas, the prohibited activity status for exceeding the

flexibility cap is justified. Also consistency with the LWRP and subsequent Sub-region sections in this approach.

Plan framework to enable nitrogen limits to update – fixed nitrogen limits

The caucus report in response to Minute 7 included draft provisions that would enable limits in the Plan Change to update and include:

a) a revised rule regime;
b) new definitions of flexibility caps and maximum caps; and
c) new methodology schedules for updating the flexibility caps, maximum caps and load limits.

The methodology schedules outline the steps that must be undertaken in order to recalculate the flexibility caps, maximum caps and nitrogen load limits using the most recent version of OVERSEER®.

The rule framework options drafted by the caucusing group would enable the nitrogen limits to be updated following new versions of OVERSEER® within a **permitted activity** regime.

The decision version has adopted the position of Council whereby fixed limits are retained in the permitted activity rules, and a new **Controlled Activity** rule introduced to enable plan users to compare their nitrogen loss calculation to updated limits in the plan through a consent process. The provisions recommended by the Council officers included a new Controlled Activity rule (15.5.2E) and the definition of two new terms "Updated Flexibility Cap" and "Updated Maximum Cap".

The panel considered that a more constrained controlled activity regime for individual farming activities is more appropriate. *A controlled activity approach is more appropriate, whereby a consent must be granted where an applicant prepares a Farm Environment Plan and demonstrates that non-compliance with the nitrogen limits is solely due to a new version of OVERSEER®*

This is a consent burden for growers

Irrigation schemes, nutrient user groups and farming enterprises

The panel identified inconsistencies between the treatment of nutrient user groups and farming enterprises in comparison with individual farming activities in that:

- farming enterprises were not able to operate at the greater of the nitrogen baseline or flexibility cap; and
- farming enterprise and nutrient users groups were not constrained by the updated flexibility cap;

The decision addresses this by amending Rule 15.5.6 so that farming enterprises may operate at the 'greater of their nitrogen baseline or flexibility cap' and by amending condition 3 of Rule 15.5.9 to limit the aggregated nitrogen loss from a nutrient user group to the greater of the flexibility cap or nitrogen baseline. In addition the decision includes a new condition which prevents a property that forms part of a farming enterprise from being part of a nutrient user group or irrigation scheme.

Activity status for nutrient user groups and farming enterprises remains Discretionary and not Restricted Discretionary as sought by HortNZ. However, this is consistent with the LWRP and sub-regional plans.

Cultural Landscape Areas

Ngāi Tahu requested amendments to the Planning Maps to identify a proposed 'cultural landscape' area. as defined by the following description:

a) *100 metres inland from the highest level of Wainono Lagoon;*
b) *10020 metres (as appears in the Ngāi Tahu submission) each side of the banks of the Waihao River and the Dead Arm;*
c) *20 metres inland from the Fenton Reserves;*
d) *Waituna Stream and Hook River east of SH1 where (which) form part of the Mātaitai .*

Hort New Zealand, submitted that the inclusion of cultural landscapes and the requirements on landowners located in those areas needs to be assessed in a s32 Report, to ensure that such an approach is the most efficient and appropriate method to be used.

The panel found that absence of a cultural landscape area on the PC3 Planning Maps and the proposed policy and amendments to Schedule 7 to accompany such a provision will not diminish the requirement for the recognition and provision for Ngāi Tahu cultural values.

Cultural landscape area and consequential amendments sought by Ngāi Tahu have not been included.

Partial Restrictions, Environmental Flow and Water Allocation Limits

HortNZ sought changes to the Partial Restrictions, Environmental Flow and Water Allocation Limits to include provision for crop survival water, and to include a note which states "partial restrictions do not include water consented for crop survival water for horticultural crops." Butlers Fruit Farms Ltd sought pro-rata restrictions for those within a water user group, citing the need to protect the financial viability of their berryfruit crops in the Hook catchment.

Regarding the Horticulture New Zealand and Butlers Fruit Farm submissions, the panel stated that no further evidence justifying special treatment for those parties was provided at the hearing. Stuart Ford did address the reliability of irrigation water. The panel were not convinced of the need for change, nor therefore for any consequential change to Schedule 10 as sought by Horticulture New Zealand.

Transfer of Water Permits

As notified Policy 15.4.30 limited the transfer of water permits to community water supplies only. HortNZ sought the expansion of the method to all users.

Excellent outcome here with the decision amending Policy 15.4.30 and Rule 15.5.40 to provide a discretionary activity status for a transfer where there is no increase in the total rate or volume of water abstracted. Prohibited activity where conditions are not met.

Schedule 24b – Good Farm Practices

Horticulture New Zealand expressed general support for the Farm Practice requirements set out in Schedule 24, but sought changes to clause (d) cultivation and the imposition of a default requirement for a 3m uncultivated vegetation strip by sought that 'or other appropriate sediment control measures' be added.

Excellent outcome here with the decision confirms that a reference to the Horticulture New Zealand Erosion and Sediment Control Guidelines for Vegetable Production June 2014 be included in clause (d)

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