14 December 2012

ADVICE NOTE

Proposed Land and Water Regional Plan – further update

This advice note accompanies that dated 20 November 2012. It provides further clarification on how the Consents Section are implementing the land use provisions in the proposed Land and Water Regional Plan (the Plan) and the implications for consent applications.

Application of Rules 5.42-5.45 (change in land use prior to 2017)

The definition of “changed” is integral to the interpretation of rules 5.42 to 5.45:

A change in land use, calculated on a per property basis that arises from either:

1. a resource consent to use, or increase the volume of, water for irrigation on a property; or

2. an increase of more than 10% in the loss of nitrogen from land used for farming activity above the average nitrogen loss from the same land for the period between 1 July 2011 and 30 June 2013. The amount of nitrogen loss shall be calculated using the OverseerTM nutrient model for the 12 months preceding 1 July in any year and expressed as kilograms per hectare per year.

Clause 1 is triggered when water is used, or the volume of water used increased, on a property and there is an associated increase in the intensity of land use (interpreted as increased nitrogen leaching). Note that the increase in nitrogen leaching does not have to be more than 10% above the 2011-2013 baseline. Any increase in leaching, so long as it is in conjunction with a new water use or an increase in the volume of water, triggers this requirement.

With regard to Clause 2 of the definition, it is possible to use OVERSEER to predict the 2013 period of the baseline. This needs to be done to demonstrate whether leaching is increasing or not. You can do this by calculating the load for the two years, averaging, then comparing that with the predicted load for the year end June 2014.

What if other applications indicate there may be a land use change?

In some instances other consents may be required from Environment Canterbury associated with a land use change. For example, a discharge permit for effluent and land use consent for a storage facility would be required for a dairy conversion. To date, such applications have been lodged without an accompanying application for land use change and without identifying whether a land use change consent is also required. Ideally, all applications for a proposal would be lodged at the same time.

1 Note that a new water use includes situations where an existing water permit has not been exercised on a property, e.g. where a dairy conversion commenced, but was not completed prior to the notification of the pLWRP.
An AEE should include a description of the proposal, as per Schedule 4 of the Resource Management Act. In addition, Form 9 of the Resource Management (Forms, Fees, and Procedures) Regulations requires the applicant to identify whether additional consents are required for a proposal, and whether or not they have been lodged. So, where a water permit or discharge consent is lodged associated with a dairy conversion, the application should state whether a change in land use consent is required. We recognise that some work will be required to determine whether a change in land use consent is required.

Currently our dairying application forms do not require this information upfront. We will be updating these in the New Year. While in the future applications will be returned under section 88 if they do not describe the proposal as a whole, including other consents required, we consider that it is unfair to implement this immediately. In the interim, the process when this information is not provided will be as follows:

**Step 1. Request further information (s92)**
Where an application has not detailed the proposal as a whole, and there is insufficient information to determine whether other consents are required in terms of the proposal, this information will likely be requested under section 92. If the additional information does not identify other consents required, and is insufficient for council staff to determine this, then the section 92 request has not been fulfilled.

**Step 2. Request for additional applications (s91)**
If a change in land use consent is required, but the applicant has not applied for it along with the section 92 response, then these will likely be requested using section 91.

Once we have updated our application forms, all applications will be expected to include a description of the proposal, with a discussion of any additional consents required. Applications that do not include this will not be receipted, and will be returned under section 88.

**Changing a water permit to include nutrient management conditions**
A change in land use is permitted if the conditions of rule 5.42 are met. Condition 1 of this rule states that:

“**The land holder has been granted a water permit, or holds shares in an irrigation company that has been granted a water permit, that authorises irrigation on the land and the land is subject to conditions that specify the maximum amount of nitrogen that may be leached:**”

As per our note dated 20 November, you can apply under s.127 of the RMA to include a condition limiting the amount of nitrogen that may be leached. However, the maximum amount of nitrogen that may be leached will likely be based on that of the original activity for which consent was granted, rather than simply on the conditions of the resource consent. This will be determined from the information provided with the **original application**, which legally forms part of the consent, any subsequent information provided, and the conditions of consent.

This approach may not be appropriate in some instances, for example where:

- The water permit has been changed from the original application, for example to allow milking dairy cows, and the property has been converted to a dairy farm.
- It is difficult to determine what was originally authorised. This will particularly apply to older consents.
Changes were made to farming practices in good faith with no awareness of what was in the original application. Again, this is more likely for older consents and those where the current consent holder differs to the original consent holder.

In such cases, we will take a pragmatic approach to considering whether it is appropriate to base nitrogen leaching on the land use that existed on at 11 August 2012, if different to what is in the original application. Where this issue arises, we may request evidence of the existing land use.

This approach is to ensure we are considering the principles of natural justice (where land owners have adjusted their activities in good faith) while taking into account what is actually authorised by the existing consents (the legally consented base line), and the intent of the plan (to prevent increased leaching from present levels).

Appended to this advice note are a series of flow charts, outlining the processing pathways for different scenarios under the Plan.

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Changes of Land Use – Clause 1

Scenario 1

All situations require evidence of level of N-leaching to be provided (default OVERSEER™)

NB: DOES NOT APPLY IN LAKE ZONE

Transfer of water permit / Increase in volume allocated to a property

Is there a N-leaching limit on water permit for subject property?

Yes

Change in Land Use consent not required as can meet Permitted Activity subject to meeting other conditions of rule 5.42

No

Will N-leaching increase from what is currently happening on the property?

Yes

New Change in Land Use consent needed.

No

Change in Land Use consent not required as no change in Intensity of activity (N-leaching)
Changes of Land Use – Clause 1

Scenario 2

All situations require evidence re level of N-leaching to be provided (default OVERSEER™)

NB: DOES NOT APPLY IN LAKE ZONE

First use of an existing Water Permit (e.g. completing a dairy conversion; new water take)

Is there a N-leaching limit on Water Permit for subject property?

Change in Land Use consent not required as can meet Permitted Activity subject to meeting other conditions of rule 5.42

Will N-leaching increase from what is implicitly authorised by existing Water Permit?

Change of Conditions to existing Water Permit to limit leaching to existing authorised levels (Change in LU becomes permitted subject to conditions of 5.42)
OR
New Change in Land Use Consent with N-leaching limited to existing levels.

Will N-leaching increase from what is currently happening on the property?

Beyond scope of existing activity. New Change in Land Use consent needed.
Changes of land use – clause 2

All situations require evidence re level of N-leaching to be provided (default OVERSEER™)

NB: DOES NOT APPLY IN LAKE ZONE

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Change in farming activity without change in water use (e.g. beef and sheep to crops or dairy; an increase in stock numbers)

Will N-leaching increase by >10% from 2011-2013 baseline?

Yes

Is there an existing N-leaching limit on water permit for subject property?

Yes

Change in Land Use consent not required as can meet Permitted Activity subject to meeting other conditions of rule 5.42

No

Change in L and Use Consent not required as does not meet the definition of Changed

No

New Change in Land Use consent needed.
Can you change the conditions of an existing water permit to meet conditions of Rule 5.42 pLWRP?

All situations require evidence re level of N-leaching to be provided (default OVERSEER™)

NB: DOES NOT APPLY IN LAKE ZONE

Proposed change of conditions to change use of existing water permit (e.g. removal of restrictions on use of water)

Is there an existing N-leaching limit on water permit for subject property?

- Yes: Can Change Authorised Use as can be Permitted Activity subject to meeting other conditions of rule 5.42
- No: Application is within scope of existing water permit. Change of Conditions OK and Change in LU then becomes permitted subject to conditions of 5.42

Is the applicant applying to adopt N-leaching conditions based on what is currently authorised by water permit (based on original application)?

- Yes: Can the applicant demonstrate that the change in water use will not result in an increase in N-leaching? (in which case why not adopt appropriate conditions?)
- No: Proposed change is beyond scope of existing activity and thus is not a change of conditions. Proposal may also change scope of use as effects of proposal beyond original application