

20 November 2012

ADVICE NOTE

Proposed Land and Water Regional Plan – nutrient provisions update

You will probably by now be familiar with the provisions of the proposed Land and Water Regional Plan (the Plan). The Plan contains rules that apply to changes to existing farming activities. These rules and their associated provisions have been the cause of some debate. This memo details how the Consents Section will approach applications to change an existing farming activity. While this advice is correct at the time of writing, it may change resulting from further legal advice. We will keep you informed of any changes.

Requirements under the pLWRP

Until sub-regional sections of the Plan are developed, the regional provisions in sections 3, 4, and 5 apply. The Plan regulates nutrient discharges from farming activities, primarily through rules 5.39 to 5.51. Where a farming activity existed at 11 August 2012 and does not change, most properties will be able to comply with the requirements of the permitted activity rules. Where an existing farming activity changes, a land use permit may be required under rules 5.42 to 5.45.

How is “changed” defined?

In relation to Rules 5.42 to 5.45, “changed” is defined in the Plan as:

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.*

To meet the objectives of the Plan, the policies and land use rules focus on controlling nutrient loss. Farm nutrient loss is likely to increase, for example, through applying more water, increasing stock numbers or applying more fertiliser. If additional water is sought for a property a land use consent will also be required. The only exception is where the applicant can demonstrate that there will be no increase in the nitrogen being leached from the property resulting from the change.

What should I include in an AEE?

An AEE for a land use permit for a change in farming activity should include the following:

- A description of the receiving environment – i.e. where the nutrients end up, via drainage and /or runoff.
- A description of the activity, including any mitigation proposed.

- A Farm Environment Plan (FEP), if prepared. If a FEP is not prepared and submitted with the application, it will be required as a condition of consent. Schedule 7 of the Plan provides the requirements for FEPs and is what ECan Consent Planners will use to assess the adequacy of your FEP. Note that if you don't provide a FEP with your application, you will be expected to provide details of actions undertaken or proposed to be undertaken to mitigate effects on water quality.
- The amount of nutrient losses from the property, calculated using the Overseer nutrient model.
- The Overseer inputs and outputs, justification for these, along with the name and qualifications/experience of the person completing the calculations. A copy of the .xml file may be requested following application.
- An assessment of the effects of the land use on water quality, including near-field, mid-field and far-field. This should include an assessment against the outcomes of Table 1(a) to (c) of the Plan (as required by the policies of the Plan).
- An assessment against the relevant planning provisions, including those in the pLWRP, Natural Resources Regional Plan, Regional Policy Statement and any catchment or sub-regional plans that cover the subject area.

While the above matters should be covered in all AEEs, the level of assessment expected will depend both on the scale of the farming activity and the significance of the effects. Note that the significance can, in the first instance, be determined by the nutrient allocation zoning. For example, a more detailed AEE will be expected for an application in an orange zone than for an application in a green zone.

How important are nutrient allocation zones?

Nutrient allocation zones are a key tool in the Plan for achieving water quality outcomes. Catchments in the region are zoned according to whether water quality outcomes are met. The level of assessment required for an application and, in some instances, the status of the activity, varies depending on the nutrient allocation zone.

Policies 4.32 to 4.34 require assessment against the water quality outcomes of the sub-regional sections, where developed, or Table 1 of the Plan. For catchments zoned red, the outcomes in Table 1 are already not met. Therefore it will be unlikely that an application to change land use in a red zone will meet the policies of the Plan, unless the nutrient discharges from the farm will reduce from existing levels. Where this is the case, your assessment will receive particular scrutiny and you will be expected to provide evidence to support the existing levels of nutrient leaching.

If the property is in a red zone and nutrient losses will increase, you will be unable to meet Table 1. If this is the case, there may be little benefit in trying to estimate the extent of such an increase. Any argument supporting a nutrient increase in a red zone should focus on other matters, such as whether effects are temporary or permanent, trade-offs in terms of other nutrient discharges or enhancements, likely changes and trends within the catchment, potential for advanced mitigation, interventions occurring elsewhere, and so on. Your application will be a non-complying activity and is likely to be publicly notified. Only activities that are out of the ordinary are likely to be granted.

What consent duration can I expect?

The duration of a land use consent will depend on the nutrient allocation zone and also will be linked to the expiry of any associated water permit, but will be no longer than 10 years. Unless the water permit expiry is less (in which case that expiry date will apply), the following durations can be expected:

- Policy 4.76 applies to consents granted in a red zone, which will generally be issued for five years.
- Consents granted in orange zones will likely be granted for between five and 10 years, depending on the activity and cumulative effects.
- Consents granted in green zones will generally be issued for 10 years.

Can I apply to add a nitrogen leaching condition to an existing water permit?

A change to an existing farming activity is a permitted activity if the conditions of Rule 5.42 are met. Condition (1) states:

“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;...”

Very few water permits limit the maximum amount of nitrogen that can be leached. We have been asked if an application can be made under s.127 of the RMA to add such a condition.

The answer is yes, you can apply under s.127 of the RMA to vary the condition limiting the use of water. However, the maximum amount of nitrogen that may be leached will be that of the original activity for which consent was granted. This will be determined on a case-by-case basis, from the information provided with the original application, any subsequent information provided and the conditions of consent. Any nitrogen leaching above that of the original activity will not be processed as a change of conditions. Note that Overseer modelling (including outputs, inputs and justification of inputs) will be required to demonstrate the maximum amount of nitrogen that is leached from the original consented activity.

I am applying for additional water. Should I apply for a land use consent at the same time?

Yes, if the use of the water is associated with a change to an existing farming activity (see above), you should apply for a land use consent at the same time you apply for a water permit. If you lodge an application for a water permit only, we will not proceed with the processing of your application (as allowed for by section 91 of the RMA) until a land use consent application is also lodged.

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