

Tabled at Hearing Monday 2 May 2016

02 May 2016

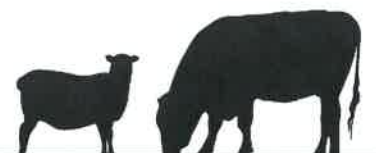
TO:
Canterbury Regional Council

ON:

**Plan Change 3,
Canterbury Land and Water Regional
Plan**

BY:

Beef + Lamb New Zealand Ltd



Reply Hearing statement

1. My name is Matt Harcombe. I am the Environment Programme Manager for Beef + Lamb New Zealand.
2. B+LNZ is an industry-good body funded under the Commodity Levies Act through a levy paid by producers on all cattle and sheep slaughtered in New Zealand. Its mission is to deliver innovative tools and services to support informed decision making and continuous improvement in market access, product positioning and farming systems.
3. Beef + Lamb New Zealand made submissions and presented evidence on the plan change. Beef + Lamb New Zealand participated in the caucusing.
4. I am here today with Roger Small. Roger and I are representing both beef+lamb New Zealand and the lower emitters group and those individual submitters from that group.
5. While caucusing covered a number of issues our response concentrates on 3 key areas. The permitted activity threshold or flexibility for lower emitters, activity status where that threshold is not met and the process by which changes to limits will be adjusted as a result of changes to versions in Overseer.

Permitted activity threshold and flexibility caps – 15kgN/Ha

9.26 In the context of the wider solutions package set out in Plan Change 3 and the technical evidence prepared by Mr Norton 148, it is the officers' recommendation that additional flexibility be enabled in the Waihao Wainono Plains area, and this is shown through a revised rule regime enabling up to 15 kg N/ha/year as a permitted activity in that area.

6. B+LNZ and the low emitters group and a number of individual submitters who were supporting those groups sought a flexibility up to 15kgN/ha to acknowledge that their activity were generally low risk for N loss in comparison to other land uses.
7. The proposed permitted activity threshold (flexibility cap) would act as a pragmatic approach to the practical implementation of the plan and most importantly provide for some staged development of those properties over time and flexibility from year to year to account for the more complex land use decisions that sheep and beef and mixed arable properties make in comparison to other farming systems. We also sought that this be decoupled from augmentation and be adopted immediately.
8. The officer is recommending that this approach be adopted in the plan and we strongly support that. However we reinforce our submissions on this subject that the expected additional load will not occur in a short time period. Without significant land use change on a sheep and beef property, the additional load is to account for the factors I have already set out. That staged development on most sheep and beef farms is funded out of profit from year to year, for planned capital development such as reticulated water, subdivision, pasture renewal and land retirement. Overall, across the catchment, this is unlikely to result in the additional catchment load being realised prior to augmentation taking place, if at all, but provides for very important flexibility on a property by property basis, and enables the staged planning to continue with confidence at minimal transaction costs to the landowners, or to the Council and ratepayers. This point is incredibly important in considering our next submission point, that of prohibited activity status, if baseline or flexibility caps are exceeded.

Activity status where lower flexibility cap is exceeded - Prohibited Activities

9. The officer in the reply report states
9.30 Taking into consideration the recommendation to increase the flexibility cap to 15kg N/ha/year prior to augmentation, and the environmental risks associated with further increases in N losses across the Waihao-Wainono Plains area and the Hills areas¹⁵⁰, it is recommended that the prohibited activity status for exceeding the flexibility cap is retained as it is an important part of the solutions package within Plan Change 3 and gives effect to Objective A2 of the NPSFM. This approach is also consistent with the LWRP and subsequent sub-regional sections.
10. B+LNZ and the lower emitters group considers that this approach is manifestly unjust for lower emitters, especially where in the same plan change, additional load has been allocated for proposed development of irrigated properties and additional flexibility has been granted to properties that exceed their maximum caps on very light soils. If for example a property currently discharging 16kg N/Ha has three very good years, with some additional grazing of finishing cattle and some dairy grazing and their four year rolling average discharge increased to 18kgN/ha they would be farming as a prohibited activity. As another example a property operating at 14kgN/Ha and then within the error margin of the modelling, a farmer at good management practice, who happens to have a balance of some lighter soils in three successive higher rainfall years, may fall into a prohibited activity, over its rolling average years, yet their management hasn't changed, their land use hasn't changed and their long term risk to the catchment hasn't changed.
11. We consider that within the context of maintaining and improving in the NPSFM, that the Councils interpretation and application to lower emitters is too conservative and that the focus is at the expense of lower N loss properties within the catchment. If maximum caps cannot meet the requirements of maintain and improve water quality within the catchment then it would suggest that these are set too high, if there is absolutely no room for some marginal change in loss at the lower end of Nitrogen risk.
12. At the hearing and subsequently at the first caucus hearing, it was B+LNZ understanding that the submitters and Council were in agreement that if the flexibility caps were to be adopted at 15kgN/Ha then this would also require a change to the prohibited activity rule, especially for those properties who were already close to 15kg. B+LNZ and the lower emitters group consider that the plan, nor the farmers at those margins, will not be able to effectively function, with the prohibited activity rule in place. While we accept that it is appropriate to adopt a prohibited activity rule for exceeding a maximum cap over time, with sufficient transition, it is our submission that there is no such planning, practical or environmental justification for adopting such a rule for lower risk properties, especially given the modelling uncertainty outlined in evidence in respect to Overseer and in respect to our general understanding of the Nitrogen loss from sheep and beef farm systems within the catchment.
13. Further it is considered that adopting the 15kg and the amended definition of flexibility cap would suggest that this is a permitted threshold, rather than a cap or limit and that exceeding that permitted threshold would necessarily require resource consent, with an appropriate activity status. In our primary submission and the resulting discussions, we suggested that this activity status be discretionary and then over 20kg be non-complying. It is our submission that this approach still would constitute a fair approach, more commensurate with the potential environmental risk and to account for the modelling uncertainty and the actual risk posed by providing flexibility to those farms.

Incorporating changes in Overseer versions to the plan

8.168 *In order for a permitted activity rule to be legally valid, the requirements, conditions or permissions need to be stated with sufficient certainty so that compliance is able to be determined readily without reference to discretionary assessments.*

8.169 *The Courts have determined over the years that any permitted activity rule must:*
a. *Be comprehensible to a reasonably informed, but not necessarily expert, person; 129*
b. *Not reserve to a council or a third party the discretion to decide by subjective formulation whether a proposed activity is permitted or not; 130 and*
c. *Be sufficiently certain to be capable of objective ascertainment. 131*

8.170 *A permitted activity rule requiring notification to a council should not reserve any discretion to the council, in that it should not require any form of subjective judgment to be made. 132*

8.171 *The methodology as outlined in the caucus response to update the provisions in response to new versions of Overseer requires significant exercise of discretion by third parties.*

8.172 *Accordingly, it is submitted that the most appropriate approach would be to provide for a controlled activity whereby a consent could be granted where an applicant can demonstrate that non-compliance with the plan provisions is solely due to a new version of Overseer. A controlled activity mechanism would also enable the Council and applicant to discuss the appropriateness of any new inputs required for new versions of Overseer in light of the particular farming activity on a case by case basis.*

14. B+LNZ opposed the way that Overseer had been used in the plan to determine individual property discharge limits. It was our submission that Overseer would assist the council in determining a fixed catchment load. Allocation of that load should then take place and then Overseer would be used to determine progress towards that discharge limit. It is unclear why an additional controlled activity status is required, in addition to those activity status already required by the plan.
15. Almost all output files will change where there is a major version change in Overseer (as opposed to minor changes and bug fixes in versions). These changes will either result in increases or decreases to modelled nitrogen loss. For example a sheep and beef farm may move from 14 to 19 simply because the majority of a particular soil type on their farm has had its drainage characteristics updated and or has been included as a specific soil type within the model. It is our submission that while subjective judgements will be made by an expert user in determining individual farm Overseer file outputs, in updating output file numbers that result from a change in Overseer versions, the Council (or the expert panel) will not be required to make subjective judgements in publishing new nitrogen discharge limits, it will simply be a technical data transfer exercise from the old version to the new and approved and published by Council. This was the collective and agreed understanding of at least the primary sector parties during the caucusing.
16. If a farmer who already holds a consent, for example an individual who currently exceeds the maximum cap, does this new controlled activity status mean they will be holding two consents, or will that be a change in consent conditions, and if so what would that mean for a farmer who exceeded a maximum cap, on a light soil, would a change in Overseer versions result in that farmer then being a prohibited activity? This would also apply at the lower end in relation to the flexibility cap.

17. We acknowledge the criteria set out in the s42a reply report, especially those set out in Day v MW regional council. While in that case it referred to the requirement for a controlled activity resource consent for understanding a Nitrogen Discharge Allowance, the proposed 15kg flexibility cap is effectively negating the need for applying Nitrogen Discharge allowances at a property level below that number. Therefore there should be no issue in permitted activity status for those farmers who fall below 15kgN/ha/yr, as while they will be required to model their discharge through Overseer, it is not a requirement to comply with a particular NDA in any given reporting period. During the hearing and the caucusing process it was repeatedly raised that this threshold is an appropriate point for a permitted activity rule. It achieves a clear purpose in respect to the functioning of the plan, is a fixed threshold below which the effects of the activity (in respect to Nitrogen loss) are no more than minor – as if all properties were below this number it would be expected that water quality objectives for the catchment would be met.
18. Irrespective of the activity status, farmers will be required to keep input data for Overseer and have a Certified Nutrient Management advisor generate their Overseer nutrient budget. The only thing that would change as a result of a version change is the number by which they are required to comply with. The cost and processing of that version updating should not be borne through individual resource consents. That is neither an effective nor efficient method of implementing the plan.