

**IN THE MATTER**

of the Resource  
Management Act 1991  
(RMA)

**AND**

**IN THE MATTER**

of the Proposed  
Variation 3 to the  
Canterbury Land and  
Water Regional Plan

**TO BE HEARD BY**

Canterbury Regional  
Council

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**Fertiliser Association of New Zealand  
submission to:  
the Reply Hearing, in response to Minute 8  
of the Hearing Commissioners**

**29 April 2016**

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## Introduction

1. On behalf of The Fertiliser Association of New Zealand (FANZ) I have participated in the caucusing of Technical Matters in relation to the nutrient management concept.
2. FANZ was not directly engaged in caucusing in the Planning matters.
3. FANZ is grateful for the opportunity provided by the Hearing Commissioners under the Directions and Minute 8 to make a submission to the Reply Hearing 2 May 2016.
4. It is understood that Minute 8 provides for presentation on matters that arose from the caucusing report and the subsequent memoranda.
5. In consideration of the Caucus Report and of the Officer's Reply report for Council Reply Hearing, FANZ wishes to make brief comment on two aspects of the proposed rules in relation to the Caucusing agreements;

**5.1 Flexibility cap and Maximum cap values being locked into the Plan, when provision is required to provide for variation arising from changes in OVERSEER versions.**

**5.2 Prohibited activity status arising from a mild exceedence of modelled estimates for nitrogen loss caps being inappropriate because the adverse effects are not necessarily certain or proven.**

## Submission

**Flexibility cap and Maximum cap values being locked into the Plan, when provision is required to provide for variation arising from changes in OVERSEER versions.**

6. In consideration of the matters relating to the Caucusing Report Section 3 which describes the draft planning framework to accommodate limits that are updated following changes to OVERSEER and S-map information; FANZ believes that the intention was that flexibility should be provided for the variation in Catchment Load estimates, Flexibility Cap calculation and Maximum Cap calculation by including the methodology for their calculation inside the plan as a schedule, and Overseer files and N loss [calculated] values, posted outside the plan, so that they can be amended.

7. This approach is similar to what is accepted for a National Environmental Standard, which may be either a standard value, or a standard methodology (process for deriving the value). One example of an NES applied by methodology is the “National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health”. Section 7 (2) of the regulations for this NES states that “*If the contaminant of concern is a priority contaminant and the land use fits within an exposure scenario adopted in the **Methodology**, the applicable standard is the soil contaminant standard for the priority contaminant.*” The methodology provides for default values to be applied, unless the qualified site specific examination is undertaken, in which case the site specific value derived following the ‘*methodology*’ applies. Hence, flexible standards appropriate to site-specific evaluation, following the NES as a methodology.
8. In relation to calculating N loss caps, FANZ is uncertain how the Flexibility Cap and Maximum Caps can be update without the need for a plan change with every subsequent version of OVERSEER, if the values are written into the Plan as currently proposed.
9. FANZ considers the intention of the Caucusing Report recommendations was to allow for updating with subsequent versions of OVERSEER, to provide for recalculated values for Flexibility Cap, Maximum Cap and Catchment Load, and for these values to remain outside the plan, posted on the Regional Council Web site while the methodology remains within the Plan as a schedule.
10. A standard methodology within the plan will provide for certainty.
11. However, as presented in the proposed rule framework, N loss values for Flexibility cap and Maximum cap appear to be locked into the tables in the schedules.
12. Confusion arising from stating both values and a methodology within the plan requires resolution.
13. FANZ considers it is resolved by retaining the methodology within the schedules and posting the resultant Flexibility Caps, Maximum Caps and Catchment load on tables on the website, outside the plan.

**Prohibited activity status arising from a mild exceedance of modelled estimates for nitrogen loss caps being inappropriate because the adverse effects are not necessarily certain or proven**

14. FANZ remains concerned that the caucusing report and subsequent memoranda have not well addressed the matter of Prohibited activity with little direct reference to Prohibited activity status or consequences of it.
15. The Officer Reply Report reports prescribes the reasons for prohibited activity can be many and varied ;

Paragraph 8.128

“... prohibited activity status to an activity, and they indicate that there is a wide range of possible situations in which prohibited activity status may be considered to be the most appropriate option“

Paragraph 8.159

“The Environment Court in Thacker endorsed the Coromandel Watchdog approach above, as to the appropriate test for imposition of prohibited activity status being whether or not that status is the most appropriate of the options available. This decision can only be reached after undertaking the planning process required under the RMA; in particular, the need for a comparative evaluation under section 32”

16. FANZ is concerned that Sect 32 of the RMA requires the most practicable options, but also assessment the efficiency and effectiveness of the provisions and assessment of benefits and costs of the environmental, economic, social, and cultural effects.
17. FANZ re-iterates the submission points presented in its initial submission on PC3, that ;
  - Modelling includes uncertainty, (particularly uncertainties in catchment modelling)
  - a mild exceedance in estimated (modelled) values will not necessarily result in significant adverse effects, or is even likely to result in significant adverse effects
  - the economic consequence of introducing prohibited activity for an occasional mild exceedance of N loss caps is potentially very significant,

To put it another way FANZ is concerned the economic and social consequences of Prohibited activity status for mild exceedance of these caps is potentially very significant whereas the environmental gain remains small and uncertain.

18. The benefits in terms of management and control of resource use can be equally achieved under ‘non-complying’ activity status or even discretionary activity status.
19. FANZ considers that ‘Prohibited’ activity status should be reserved for controls where there is very high level of certainty that not complying with the conditions will result in known and significant consequence. In the case of “mild” exceedance of the Max Cap, Flexibility Cap or Baseline, this is not proven or perhaps even likely.
20. Prohibited activity should be applied more appropriate to a gross exceedance of the estimated acceptable N loss, but this would send entirely the wrong signals to land users. Therefore the appropriate application of activity status is requested by FANZ.
21. FANZ submits that Non-complying would be the most appropriate activity status when the N loss Caps are exceeded.

### **Concluding Comment**

22. FANZ is very grateful for the opportunity to respond to the Reply Hearing under the Direction and Minute 8. Thank you.

**End**



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The Fertiliser Association of New Zealand  
29 April 2016