

Plan Change 3 to the Canterbury Land and Water Plan

Fonterra's statements to the Hearing Panel on
Monday 2nd May 2016

1. INTRODUCTION

- 1.1. My name is Susan Clare Ruston.
- 1.2. I am Fonterra Co-operative Group's Environmental Policy Manager for the South Island.
- 1.3. My qualifications and experience are outlined in my evidence presented during the hearings for Proposed Plan Change 3 (PC3) to the Canterbury Land and Water Regional Plan.
- 1.4. I am familiar with the provisions of PC3, and the related caucusing reports and Officer's Reply documents.
- 1.5. I am authorised by Fonterra to provide this statement on its behalf as a Fonterra representative.

2. CONTEXT

- 2.1. Fonterra participated in each of the technical and planning caucusing meetings. Either I and/or our planning consultant (Gerard Willis) were present for each.
- 2.2. Fonterra appreciates the efforts made by all parties present to find solutions to the outstanding issues within PC3, in particular the issues related to:
 - a) maintaining opportunity for permitted activity status based on flexi and max caps while at the same time accommodating changes in OVERSEER versions; and
 - b) simplifying the drafting of the rules to improve the plans workability.
- 2.3. Parties participating in the caucusing meetings incurred significant costs in time and travel, and in our case costs for our planning consultant. Parties fully invested themselves in finding solutions. Different perspectives and implications of potential solutions were shared. Through collaboration full agreement was achieved on many matters, but not all.
- 2.4. Following caucusing the Officer's Reply documents have been released. It is disappointing to see these documents making recommendations that are in direct contrast to the tasks set by the Hearing Commissioners for the caucusing meetings and in contrast with key matters agreed on by all parties before and during the caucusing meetings.
- 2.5. The following sections explain our concerns.

3. PERMITTED ACTIVITY STATUS & ADDRESSING OVERSEER VERSIONS

- 3.1. Fonterra understands that a key intention of the Zone Committee (ZC) and the Nutrient Allocation Reference Group (NARG) was to allow as many farming activities to be permitted as was deemed appropriate based on the nature and scale of the risks posed by the activity.
- 3.2. This intention led to the development of a nitrogen loss framework that adopted 'flexi caps' and 'max caps', along with use of baselines, to determine whether an activity was permitted or required a consent.
- 3.3. OVERSEER was relied on to help set the flexi and max caps, and would need to be used for a farmer and council to determine the farmer's activity status (i.e. permitted or needing a consent). OVERSEER would also therefore be a critical tool in Council's monitoring of farmer activities and potential enforcement action.
- 3.4. OVERSEER is a computer based modelling tool that is regularly updated to improve its representativeness.
- 3.5. Fonterra understands that as new versions of OVERSEER are released, old versions tend to be removed from use. However this is not always the case.

- 3.6. The potential for older versions to be removed from use poses the problem that when OVERSEER based nitrogen loss numbers are relied on in rules in regional plans, once a new version of OVERSEER is released it may no longer be possible for the farmer, or council, to determine whether the farmer is complying with the rules (i.e. it will no longer be possible to compare like with like).
- 3.7. Given this problem, and at the same time the intention of the ZC and NARG to ensure as much was permitted as was appropriate, the technical caucusing meetings focused on identifying a clear method for adoption of flexi and max caps that could be updated as versions of OVERSEER change.
- 3.8. The technical caucusing group was fully aware that for a permitted activity 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 (as stated in paragraph 8.168 of the Officer's Reply report).
- 3.9. Accordingly a set of clear and certain methods for updating the flexi and max caps were identified.
- 3.10. Provided no unforeseen mechanisms are added to the OVERSEER model, there is no discretion in the methods identified. Discretion can only arise if OVERSEER is modified to include a mechanism that cannot be foreseen at this point. To address this it was recommended that a small expert group be formed to determine the appropriate adjustments to the OVERSEER files used in determining the new flexi and max caps.
- 3.11. Following changes to OVERSEER versions, it was recommended that the regional council make publicly available the new flexi and max caps – again providing certainty of the new flexi and max cap numbers.
- 3.12. Fonterra is concerned that the Officer's Reply and the redlined Section 42A report requires a farmer that can no longer comply with the flexi or max caps set in the plan, following a change in OVERSEER, to apply for a controlled activity consent. Our key concerns with the Officer's recommendations are:
- a) *Not being able to compare same with same* - A farmer may be compliant with the current permitted activity rules that rely on the flexi and max caps defined today, and may not change his activity in any way, but following a change in OVERSEER version this farmer may no longer be compliant with the permitted activity rule i.e. he will need a consent. This could be seen as a third party (i.e. the administrators of OVERSEER) making decisions that change the activity status of an activity.

Arguably it is also possible that a farmer may be unable to comply with the flexi and max caps set within the plan, and may apply for a consent by the necessary date, but following that date a change in OVERSEER version may lead that farmer to be compliant with the caps set in the plan and not to have needed the consent.
 - b) *Capacity within council* – It is possible that many farmers, following a change in OVERSEER will switch from being permitted under the rules to needing a consent, regardless of whether any change is made to activities on the farm and therefore regardless of any change in environmental risk. Given that this could impact almost every farmer within the South Coastal Canterbury area Fonterra is concerned that the Officer's recommendations may not be able to be implemented by the regional council. In addition to the processing and administration of such a large number of consent applications, if nitrogen loss limits are set in the consent then these consents will need updating each time there is a change to OVERSEER.

4. RELIEF SOUGHT

- 4.1. Include a methodology within the plan that allows the flexi and max caps to be updated following changes to OVERSEER and allow incorporation of these updated caps in the permitted activity rules.

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