

**PC3 to the Land and Water Regional Plan  
Synopsis for Reply Hearing**

1. This document set out a brief synopsis of the issues covered in the Council Officers' section 42A Reply Report dated 2016, the Council's response to the issue and, if relevant, reference to where provisions are provided for in the tracked changes version of PC3.

**How much weight does the Panel need to give to the ZIP Addendum?**

2. Given the close relationship between the CWMS, the Zone Committee processes, ZIP and ZIP Addendum, it is submitted that weight ought to be given to the ZIP and ZIP Addendum in the context of PC3 and any decision on it.
3. This is addressed at Paragraphs 8.2-8-11 of the Section 42A Reply Report.

**Does PC3 take a balancing approach in conflict with the decision of the Environment Court in *Kahungunu*?**

4. PC3 does not seek to balance degradation of water quality with an improvement in another area. Accordingly, it is submitted that the approach in PC3 is different to the unders and overs approach criticised in *Kahungunu*.
5. This is addressed at Paragraphs 8.12-8.31 of the Section 42A Reply Report.

**Is the Hearings Panel is bound to follow decisions of the Environment Court?**

6. The Panel is not bound by decisions of the Environment Court. However, the Panel is bound by the RMA and is obliged to apply the correct law.
7. This is addressed at Paragraphs 8.32-8.40 of the Section 42A Reply Report.

**Has the NPSFWM (2014) been given effect to by the LWRP Objectives and Policies?**

8. While the LWRP did not give effect to the NPSFM 2014, the objectives in the NPSFM 2014 are broadly the same as the objectives in the NPSFM 2011.
9. This is addressed at Paragraphs 8.41-8.44 of the Section 42A Reply Report.

**Have all of the waterbodies been considered in the plan and due weight given to Wainono Lagoon, or has more weight been given to Wainono Lagoon than necessary?**

10. The Council has considered all of the waterbodies in preparing PC3.

11. This is addressed at Paragraphs 8.45-8.46 and 9.15-9.16 of the Section 42A Reply Report. See also Technical Memorandum prepared by Mr Norton at page 8.

**Does the Council have an obligation to restore degraded waterbodies?**

12. The obligation of the Council is to "maintain and improve" (or "enhance") (section 30 RMA and Objective A2 NPSFM) and not to "restore" in the way interpreted by the Court in *Puke Coal*.
13. This is addressed at Paragraphs 8.47-8.52 of the Section 42A Reply Report.

**Are Rules 15.5.12(a), 15.5.13, and 15.5.14 (the incidental discharge rules) ultra vires?**

14. No, the rules do not link classification of the activities to which they apply with compliance of another resource consent, but to the existence of other relevant consents.
15. This is addressed at Paragraphs 8.53-8.83 and 9.70-9.72 of the Section 42A Reply Report.
16. See also rules 15.5.12A, 15.5.13 and 15.5.14.

**What is the position and scope in relation to Section 14(3)(b) takes for stock water?**

17. The Council's interpretation is that "individual" in section 14(3)(b) only applies to a natural person (with the consequence that section 14(3)(b) does not apply to any water taken or used by a body corporate, company, or person responsible for managing animals). The Council's interpretation of section 14(3)(b) is a region-wide implementation issue, rather than being a matter specific to or addressed by PC3. Further, the Council may limit takes under section 14(3)(b) to ensure that the taking or use does not have an adverse effect on the environment.
18. The Council Officers consider that the region-wide rules are sufficient and that a rule is not required in PC3.
19. This is addressed at Paragraphs 8.84-8.115 and 9.88-9.89 of the Section 42A Reply Report.

**What are the notification obligations in respect of restricted discretionary activities?**

20. A restricted discretionary activity rule can influence the notification of a consent application according to the matters of discretion provided by the rule as the consent authority must disregard effects that do not relate to a matter to which the rule restricts discretion.
21. This is addressed at Paragraphs 8.116-8.134 of the Section 42A Reply Report.

**Is it lawful to include rules specifying notification to particular parties?**

22. Such a rule would be ultra vires, applying the plain and ordinary meaning of the words in section 77D of the RMA.
23. This is addressed at Paragraphs 8.116-8.134 of the Section 42A Reply Report.

**Does the stacking of consents/pro rata reductions for B block consents result in the derogation of existing consents?**

24. No, the pro-rata restrictions for water takes in the 'B' allocation block only apply to new water take applications and existing water permits will not be affected or diminished.
25. This is addressed at Paragraphs 8.135-8.139 and 9.103-9.104 of the Section 42A Reply Report.
26. See Rule 15.5.37, Rule 15.5.38 and Table 15(j).

**Is it lawful to classify lawfully established activities as prohibited activities?**

27. Yes, in a regional context there is no presumption in the RMA that existing lawfully established activities can continue without further controls or restrictions.
28. This is addressed at Paragraphs 8.140-8.160 of the Section 42A Reply Report.

**How should PC3 accommodate changing versions of Overseer?**

29. It is the officers' view that an updating mechanism, such as that arrived at via caucusing would be a more appropriate tool to set limits that deliver the intent of PC3 as notified, compared to fixed limits implemented with changing OVERSEER® versions.
30. The permitted activity rule and associated methodology put forward as part of the caucus report for PC3, is not sufficiently certain to be valid as part of a permitted activity rule framework. The Council Officers recommend that fixed limits are retained in the permitted activity rules and that a new controlled activity rule is introduced whereby a consent must be granted where an applicant can demonstrate that non-compliance with the provisions is solely due to a new version of OVERSEER®.
31. The recommendation to increase the flexibility cap in the Waihao-Wainono Plains area to 15kg N/ha/year prior to augmentation will result in fewer people being affected by this consenting regime.
32. The new controlled activity rule includes new methodology schedules that outline the steps that shall be undertaken to recalculate the limits using the most recent version of OVERSEER®. It is the officers' view that it is most appropriate to adopt the "percent" method with a "nominal" method starting point using the "first listed" input

files (as laid out in Appendix 4 to the caucus report) for both Flexibility Caps and Maximum Caps.

33. Policy 15.4.9A enables consideration of version changes to OVERSEER® when determining compliance with load limits. The Officers recommend adding a new clause that provides direction on the application and use of the methodology schedules for updating Flexibility Caps and Maximum Caps.
34. This is addressed at Paragraphs 8.161-8.186 and 9.31-9.47 of the Section 42A Reply Report. See also technical memorandum prepared by Ms Lillburne; and technical memorandum prepared by Mr Norton at page 9.
35. See Policy 15.4.9A, Rule 15.5.2E, definitions of "updated flexibility cap" and "updated maximum cap", Schedule 29 (Flexibility Caps), Schedule 30 (Maximum Caps) and Schedule 31 (Load limits).

**Which attributes should be included in Tables 15(a) and 15(c), and what is the most appropriate value for some of those attributes?**

36. The officers recommend that Table 15(a) includes a thickness criteria of <1mm for cyanobacteria mats.
37. This is addressed at Paragraphs 9.4-9.7 of the Section 42A Reply Report.
38. See Table 15(a).

**What is the link to Table 15(c) in the plan provisions and if there is no link, then what is the purpose of the table?**

39. The water quality limits set in Section 15 prevail over the default limits in Schedule 8 of the LWRP. The water quality limits in Table 15(c) have been set so that the freshwater outcomes in PC3 will be achieved. Reverting back to the default region-wide water quality limits in Schedule 8 of the LWRP provides no assurance that the water quality outcomes will be met.
40. This is addressed at Paragraphs 9.8-9.14 of the Section 42A Reply Report.
41. See Policy 4.2 and 4.7 of the LWRP and the water quality outcomes in Tables 15(a) and 15(b) and the water quality limits set in Tables 15(c), 15(d) and 15(e).

**Appropriateness of the use of the phrases "Nitrogen baseline" and "Nitrogen loss calculation" as defined by the LWRP**

42. Both the Nitrogen baseline and the Nitrogen loss calculation are averaged over a four year period, moderating the impact of one or two seasons with a higher or lower than average nitrogen loss on the Nitrogen loss calculation. The Council Officers' do not consider that further amendments to the definitions are necessary or appropriate.
43. This is addressed at Paragraphs 9.17-9.20 of the Section 42A Reply Report.

**What should the flexibility cap for the Waihao-Wainono Plains Area be? And should this be linked to augmentation?**

44. 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. The Council Officers also consider that there is sufficient incentive for augmentation without using augmentation as a trigger for increasing to a higher flexibility cap for the Waihao-Wainono Plains area.
45. This is addressed at Paragraphs 9.21-9.27 of the Section 42A Reply Report.
46. See Rule 15.5.2(1)(b) and (c) (and Policy 15.4.15 in respect of augmentation).

**What is the appropriate activity status for farming activities that exceed either their N baseline or flexibility cap (whichever is the greater)?**

47. 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 only applies to the Waihao-Wainono Plans Area pre-2025, the Waihao-Wainono Hills Area and the Northern Streams Hills Area (that is not a lawful exceedance or as a result of an Overseer update).
48. This is addressed at Paragraphs 9.28-9.30 of the Section 42A Reply Report.
49. See Rule 15.5.5.

**Is there duplication between farming enterprises and nutrient user groups?**

50. The officers consider that both concepts should be retained to reflect the Zone Committee Solutions Package that specifically sought the inclusion of the Nutrient User Groups provisions.
51. This is addressed at Paragraphs 9.64-9.69 of the Section 42A Reply Report.
52. See Rules 15.5.6 to 15.5.8 in relation to farming enterprises and Rules 15.5.9 to 15.5.10 in relation to Nutrient User Groups.

**Are amendments required to the industrial and trade waste rules and to include specific provisions to provide for Fonterra's on-site waste water treatment system at its Studholme processing facility?**

53. The Council Officers recommend including additional policies 15.4.9B and 15.4.9C<sup>1</sup> to provide sufficient guidance when considering consent applications under Rules 15.5.17 and 15.5.18. Further amendments to Rule 15.5.17 are recommended to

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<sup>1</sup> The s42A Reply Report incorrectly refers to the additional policies as 15.4.13B and 15.4.13C. This should read Policies 15.4.9B and 15.4.9C.

provide for the "substitution" rule while addressing concerns related to allowing nitrogen losses to exceed the maximum cap.

54. The Council recommend that the load limit for industrial wastewater should be 27T to reflect Fonterra's volunteered reduction in the load, and to include wastewater and sewage from the wastewater system.
55. This is addressed at Paragraphs 9.73-9.79 of the Section 42A Reply Report.
56. See Policies 15.4.9B and 15.4.9C, Rules 15.5.17 and 15.5.18, and Table 15(o).
57. Given the proposed amendments to the definition of on-site waste water treatment system via Plan Change 4 it is the officers' view that the requested amendments put forward by Fonterra are no longer necessary.
58. This is addressed at Paragraphs 9.80-9.81 of the Section 42A Reply Report.

**Is a minimum flow required/appropriate for the Otaio River?**

59. Due to the anticipated cultural and environmental benefits, the officers consider that a minimum flow is required/appropriate for the Otaio River and do not recommend any changes to the proposed minimum flow.
60. This is addressed at Paragraphs 9.82-9.89 of the Section 42A Reply Report. See also technical memorandum by Mr Norton at pages 6-7.
61. See Tables 15(h), 15(i), 15(j).

**Should the proposed minimum flows (based on natural flows in the river) for the Waihao River be retained?**

62. Given that the discharge is mitigation for an increased irrigation area associated with resource consent CRC091997, it is not considered appropriate for abstractors to access the water discharged for environmental purposes. It is therefore the officers recommendation that the proposed minimum flows (based on natural flows in the river) are retained.
63. This is addressed at Paragraphs 9.90-9.102 of the Section 42A Reply Report.
64. See Table 15(g).

**What are the appropriate conditions for the replacement of a surrendered take for surface water from lowland surface waterbodies or stream-depleting groundwater for deeper groundwater that is not hydraulically connected to surface waterbodies?**

65. It is the officers' view that the volume of water that may be taken under the new deep groundwater consent should be limited to that which is considered reasonable for the area of land irrigated under the existing surface water consent, at the time PC3 was notified. This enables the irrigators to continue to utilise their existing irrigation infrastructure but does not enable consent holders to seek an equal volume to the

consented surface water take, if that previously consented volume was unable to be taken or used due to the self-limiting nature of the water takes.

- 66. This is addressed at Paragraphs 9.105-9.107 of the Section 42A Reply Report.
- 67. See Policy 15.4.23, Rules 15.5.32 and 15.5.40.

**Are amendments required to introduce provisions that enable the non-consumptive take and use of water?**

- 68. The region-wide rules (Rules 5.126, 5.127, 5.131 and 5.132) still apply and additional provisions in Plan Change 3 are not considered necessary.
- 69. This is addressed at Paragraphs 9.108-9.110 of the Section 42A Reply Report.

**Should policy direction be included that reflects the intent of section 104(2A) of the RMA in respect of consent duration for regionally significant infrastructure**

- 70. Yes, it is recommended that additional guidance is included in Policy 15.4.35 that enables the regional council to consider applications for a longer duration, however limiting that consideration to consent applications for regionally significant infrastructure.
- 71. This is addressed at Paragraphs 9.114-9.117 of the Section 42A Reply Report.
- 72. See Policy 15.4.35.

**Should Table 15.8 (Flow sensitive catchments) be amended to delete reference to St Andrews Stream?**

- 73. Yes, the relevant sub-catchment should refer to Lyalldale Stream, and the monitoring site should be State Highway One. It is recommended that Table 15.8 (Flow sensitive catchments) be amended accordingly.
- 74. This is addressed at Paragraphs 9.121-9.124 of the Section 42A Reply Report.
- 75. See Table 15.8, page 75.

**Should provisions be made to protect the habitat of Canterbury mudfish species?  
How should the rules be amended to protect the habitat of Canterbury Mudfish?**

- 76. Yes, the rules should be amended to protect the habitat of Canterbury Mudfish. A new permitted activity rule is recommended that adds a condition to various region-wide rules that the activity is not undertaken in a mudfish habitat site listed in Schedule 32.
- 77. This is addressed at Paragraphs 9.129-9.145 of the Section 42A Reply Report. See also technical memorandum prepared by Drs Michael Greer and Adrian Meredith.
- 78. See Rules 15.5.21A and 15.5.21B, and Schedule 32.

