

Memo

Date	3 June 2015
To	Brett Aldridge
CC	Phillip Maw, Don Rule, Peter Constantine
From	Alastair Picken

Subject: Central Plains Water Clause 16(2) change to Variation 1 to the proposed Land and Water Regional Plan

The following alteration is to be made to Variation 1 to the proposed Land and Water Regional Plan pursuant to Clause 16(2) of Schedule 1 of the Resource Management Act 1991 (RMA).

Clause 16(2) states:

“A local authority may make an amendment, without using the process in this Schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.”

Issue

On 18 May 2015 Central Plains Water (CPW) wrote to Mr Don Rule – Director of Resource Planning and Consents requesting clause 16 changes to Proposed Variation 1: Hearing Commissioners Recommendations.

CPW is required to apply for resource consent as a discretionary activity under Rule 11.5.15. However, CPW is concerned that on a narrow interpretation of Rule 11.5.15, the Scheme cannot meet condition 2 of that rule and any application would be processed as a non-complying activity under Rule 11.5.15A.

CPW's particular concern is that *condition 2* requires that *the irrigation scheme is described in Table 11(j) and the nitrogen loss calculation for the **Scheme** will not exceed the **Irrigation Scheme Nitrogen Limits** in table 11(j)*. CPW says it will not meet condition 2 as the 'Scheme' (i.e. existing **and** new irrigation) would exceed the Irrigation Scheme Limits in Table 11(j), which specified a Scheme Nitrogen Limit for new irrigation **only**.

[Bold and underlined text is CPW's emphasis]

CPW therefore proposes inserting a new line in Table 11(j) to allocate to the Scheme a nitrogen limit for land irrigated prior to 1 January 2015 (i.e. existing irrigated land) that is equal to *“the total aggregate Nitrogen baseline”* and deleting the note within Table 11(j).

Assessment

Environment Canterbury staff consider that the changes to Table 11(j) proposed by CPW are beyond the scope of a minor amendment under Clause 16(2).

We also consider that on a proper analysis, condition 2 of Rule 11.5.15 when read in conjunction with Table 11(j), it should be interpreted such that the Scheme would comply with condition 2 if the nitrogen loss calculation for land not irrigated prior to 1 January 2015 (new irrigated land) does not exceed the nitrogen limit of 979 tonnes per year in Table 11(j). The scheme would fall to a non-complying activity under Rule 11.5.15A only if this nitrogen limit for new irrigated land would be exceeded.

However, it is also agreed that the intent of condition 2 could be made clearer by a minor alteration to the wording. This would clarify that condition 2 requires the Irrigation Scheme [CPW] to comply with the nitrogen load for new irrigated land in Table 11(j) only, to be processed as a discretionary activity.

Solution

Amend Rule 11.5.15 condition 2 of Variation 1 to the proposed Canterbury Land and Water Regional Plan as follows (strikeout and red text):

2. If the Irrigation Scheme is described in Table 11(j) the nitrogen loss calculation for ~~the Scheme~~ land that was not irrigated (other than by effluent) prior to 1 January 2015 will not exceed the Irrigation Scheme Nitrogen Limits in Table 11(j).

Recommendation

Accept the minor alteration recommended by Environment Canterbury staff, and consistent with legal advice obtained from Wynn Williams (attached), as an alteration of minor effect.

Delegated Authority: Brett Aldridge, Regional Planning Manager

Signature: 

Date: 03 June 2015