

Tabled at Hearing

12/12/2016

ECAN

Plan Change 5 to the Canterbury Land and Water Regional Plan

Addendum to the Section 32 Report – 12 December 2016

1. A further evaluation pursuant to section 32AA of the RMA, undertaken in accordance with section 32(1) to (4) is required for any changes that have been made, or are proposed, for the plan change since the section 32 evaluation report was completed, which must be at a level of detail that corresponds to the scale and significance of the changes. This further evaluation must be published in an evaluation report that is made available at the same time the decision on PC5 is made; or, be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken.
2. It is noted that Section 32AA requires an evaluation of the changes. In this regard an evaluation is not provided of matters that are unchanged between the notified version and the Reply Recommendations.
3. The Reply Recommendations include changes to policies and rules that have the effect of making the policy or rule more effective, certain and specific, expanding its coverage, or making relatively minor alterations to the content of policies and rules.
4. While the Reply Recommendation changes have been considered carefully, when aligned with the options evaluated within the Section 32 Report prepared for notification of Plan Change 5, the revised policies and rules still fit comfortably within the scope of the options considered and accordingly the evaluation still stands.
5. The primary reason for this is that the Section 32 evaluation generally stays at a "topic" level and evaluates a set of policies and rules that achieve a particular outcome, rather than assessing the specific wording of the policies and rules.
6. On this basis, the policies and rules have been re-evaluated in terms of Section 32(1)-(4) and the evaluation recorded for the Section 32 Report at the time of notification is considered to appropriately and accurately reflect the changes incorporated in the Reply Recommendations. Accordingly, no further written record of the further evaluation is necessary for the bulk of the adjustments made.
7. There are three changes to Part A and four changes to Part B of PC5 that warrant further evaluation under s32AA of the RMA, which are as follows:
 - a. amendment of the permitted activity threshold with respect to winter grazing;
 - b. incorporation of policies and rules that enable a resource consent to be considered in specific circumstances where the Farm Portal is considered less appropriate;
 - c. a range of adjustments to Farm Environment Plan requirements in Schedule 7;
 - d. deletion of Rule 15B.5.7, amendment of Rule 15B.5.6 and the introduction of new Rule 15B.5.6A.
 - e. deletion of the prohibited activity status that applies to farming activities that do not comply with 90% of the GMP Loss Rate in the Hakataramea River Zone and Greater Waikākahi Zone.
 - f. amalgamation of rules applying to different Nutrient Allocation Zones (NAZs) and Freshwater Management Units (FMUs).

- g. the application of recommended Orange Zone Rule 5.54A in the Haldon Zone and Mid Catchment Zone and the introduction of new Rule 15B.5.33A in the Valley and Tributaries Zone.

Amendment of the Permitted Activity Threshold with Respect to Winter Grazing

8. The notified PC5 winter grazing threshold is set at a simple 20 hectares. A large number of submissions requested a change to a proportion of farm area-based threshold. Ten percent of land area was the most commonly requested land area proportion.
9. Following analysis and consideration of equity issues, a more complicated threshold has been recommended, which provides for 10 hectares of winter grazing on all properties up to 100 hectares in area, a 10% threshold for properties between 100 hectares and 1000 hectares, and a 100 hectare maximum for all properties over 1000 hectares.¹
10. This replacement threshold maintains the general position in the PC5 Section 32 Report, which considered “narrative thresholds”, as opposed to numeric limits based on modelled outcomes, to be the most appropriate method for identifying properties below which nutrient discharges were considered acceptable. This analysis is contained in Section 7.3 of the PC5 Section 32 Report.

Assessment of Effectiveness and Efficiency

11. The evaluation of the effectiveness and efficiency of the PC5 permitted activity thresholds, including costs and benefits, against the relevant LWRP objectives is at 7.3.3 of the Section 32 Report².
12. The revised permitted activity framework is still considered to implement the LWRP Objectives and the analysis of “Option 3” in the Section 32 Report remains valid. However, the following additional comments are made with respect to the revised thresholds:
- The revised permitted activity thresholds retain the original intent of the PC5 narrative thresholds, in providing a simple and unchanging threshold against which a farming activity can be assessed. While the calculation is more complex, and may need to be repeated if the area of a property changes, the revised threshold is considered simple to apply and maintains confidence that the Canterbury Regional Council is applying a closer level of assessment to properties where nutrient discharges are higher.
 - The revised permitted activity threshold recognises that for larger farming operations, the notified winter grazing threshold is inefficient, when set at 20 hectares. This recognises that for larger properties, the overall nutrient discharges are likely to be balanced against a lesser level of discharge from the balance of the property. When considered in combination with the existing 50 hectare irrigation threshold, the analysis³ shows that the revised threshold is appropriate.

¹ Refer to paragraphs 4.52 to 4.67 of the Reply Report for full analysis and reasoning.

² At page 7-24

³ North *et al*, appended to the Reply Report.

- The revised permitted activity thresholds are likely to result in some equity shift from smaller properties to larger properties. There may be a reduced economic cost in terms of consenting and constraints on activities for properties greater than 200 hectares in area (those which would otherwise have been more constrained by the 20 hectare limit) and greater constraint for those properties below 200 hectares in area, with attendant greater costs.
- The assessment by North *et al* identifies that overall the environmental costs were likely to be reduced, from the PC5 notified provisions.

“Exceptions Path” Policies and Rules

13. The Farm Portal and requirements to use the Farm Portal for assessment of nitrogen discharges are a core component of PC5. A number of submissions, and subsequent evidence, focused on the need to provide “an alternative pathway”⁴ where the submitters considered that the Farm Portal gave inaccurate results.
14. The risks of a widely available alternative path have been considered in the Section 42A Report⁵ and the Reply Report⁶. Conversely, evidence set out identified benefits of such a path. On balance, the Reply Recommendations include an “exceptions path” incorporated within new rules and policy guidance. The Reply Recommendations accept that there are situations where the Farm Portal is less appropriate to use, but strongly endorses a continued emphasis on Good Management Practices for all farming activities.⁷
15. This is a modification of the existing provisions, where if the Farm Portal is unable to generate Baseline GMP Loss Rates, the definition of nutrient baseline may be used.

Assessment of Effectiveness and Efficiency

16. The evaluation of the effectiveness and efficiency of the PC5 nutrient management provisions (which did not include a specific policy and rule set for the “exceptions path”) against relevant LWRP Objectives is at 7.1 of the Section 32 Report⁸.
17. The new policy and rule framework is still considered to implement the LWRP Objectives and the analysis of “Option 2” in the Section 32 Report remains valid. However, the following additional comments are made with respect to the additional policies and rules:
 - The PC5 Section 32 Report, which analyses the nutrient management framework, including use of the Farm Portal to general Baseline GMP Loss Rates and GMP Loss Rates and the various activity status and rules for each of the nutrient allocation zones, remains valid, as these elements are largely unchanged.

⁴ “Alternative pathway” is the terminology is that used in a number, if not the majority, of the submissions.

⁵ See paragraphs 6.152 to 6.155.

⁶ See paragraph 4.40.

⁷ Full analysis is at paragraphs 4.36 to 4.38 of the Reply Report.

⁸ At page 7-1 of the Section 32 Report

- The addition of an exceptions path is intended to supplement the existing policies and rules by providing an explicit avenue for activities where it is recognised that the Farm Portal, primarily through the current use of OVERSEER®, may not provide the most accurate nitrogen loss levels. The policy framework and the associated rules clearly require GMP to be undertaken on these properties, and require, through the resource consent process, the generation of nitrogen loss rates that are equivalent to the GMP Loss Rate and Baseline GMP Loss Rate in the Farm Portal. In this way, it is anticipated that the costs of such a process will be incurred through transaction costs, in terms of applying for and justifying an appropriate resource consent, rather than as an overall cost to the environment.
- The addition of a policy and rule framework to recognise when the Farm Portal may give less appropriate results is considered to increase the effectiveness of the PC5 provisions.

Amendments to Schedules 7 and 7A

18. PC5, as notified, included a number of improvements to Schedule 7, which relates to Farm Environment Plan requirements, and a new Schedule 7A, which provides for a lower and more specific set of requirements for management plans, which are undertaken as a permitted activity.
19. The Section 42A Report identified a small number of improvements to Schedule 7, and suggested the replacement of Schedule 7A with a general requirement to implement practices set out in the GMP booklet⁹.
20. During the course of the hearing, alignment of Schedule 7 with the GMP booklet was questioned, and in the Reply Report¹⁰:
 - A number of additional changes have been recommended to more closely align the content of the schedule with the GMP booklet, whilst maintaining auditability of the items in Schedule 7;
 - The items in Schedule 7A have been re-introduced in the Reply Report, with further specific additions, including an ability to utilise an industry based Farm Environment Plan template.

Assessment of Effectiveness and Efficiency

21. The evaluation of the effectiveness and efficiency of the PC5 nutrient management provisions (which includes amendments to FEP requirements and Schedule 7A) against relevant LWRP Objectives is at 7.1 of the Section 32 Report.
22. The changes to Schedule 7 and 7A are still considered to implement the LWRP Objectives and the analysis of "Option 2" in the Section 32 Report remains valid. However, the following additional comments are made with respect to the changes:
 - The changes to Schedules 7 and 7A are intended to improve alignment with the GMP booklet, while retaining sufficient certainty, so they are considered to be more of a 'technical' nature, rather than imposing new or reducing existing

⁹ Industry-agreed Good Management Practices relating to water quality, 18 September 2015

¹⁰ See paragraphs 4.70 to 4.76 for full analysis

'on-farm' requirements. On this basis, efficiency is considered largely unchanged.

- Improved alignment with the GMP booklet is considered to be more effective, as the booklet has industry backing and understanding, meaning that Schedule 7 and 7A requirements are more likely to be implemented, with appropriate industry backing and guidance.

Deletion of notified Rule 15B.5.7, amendment to Rule 15B.5.6 and the addition of new Rule 15B.5.6A

23. PC5, as notified, includes Rule 15B.5.7 which classifies farming activities managed under a water permit with FEP requirements, but no Nitrogen Discharge Allowance (NDA), in the Valley and Tributaries, Hakataramea Freshwater Management Unit and Greater Waikākahi Zone as a controlled activity. The Section 32 Report states that Rule 15B.5.7 recognises that there are water permits granted within Valley and Tributaries, Hakataramea Freshwater Management Unit and Greater Waikākahi Zone that have been through a rigorous consenting process, however do not include maximum nitrogen leaching conditions. The Report states:
- “The controlled activity status therefore provides a process for imposing conditions requiring Good Management Practise Loss Rates on these farming activities, while providing certainty that the consents will be granted.”¹¹*
24. In the Reply Report, the Officers recommend Rule 15B.5.7 is deleted and Rule 15B.5.6 is amended to instead classify farming activities managed under a water permit without an NDA as permitted provided:
- the permit was granted between 1 November 2009 and 13 February 2016; and
 - the permit has commenced; and
 - the permit is subject to conditions which require an audited Farm Environment Plan; and
 - the conditions of the permit have not changed; and
 - the property is registered with the Farm Portal.
25. The recommended amendment to Rule 15B.5.6 is discussed at paragraph 6.266 of the Reply Report and is intended to further acknowledge the regulation already imposed on these farming activities, through the conditions of existing water permits.
26. Additionally, the Officers recommend the inclusion of new Rule 15B.5.6A, which classifies, as a controlled activity, farming activities that are managed under a water permit that replaces a water permit granted before 18 February 2016, with no increase in nitrogen losses.

¹¹ Section 32 Report, Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 13.2.2 pp13-15.

Assessment of Effectiveness and Efficiency

27. The Section 32 Report¹² evaluates the effectiveness and efficiency of PC5 Waitaki wide provisions (including Rules 15B.5.6 and 15B.5.7) against relevant LWRP Objectives.
28. The Officers' recommendations to amend Rule 15B.5.6, introduce 15B.5.6A and delete 15B.5.7 are still considered to implement the relevant LWRP Objectives¹³ and the efficiency and effectiveness assessment in the Section 32 Report remains valid. However, the following additional comments are made with respect to the recommended Rules 15B.5.6 and 15B.5.6A:
- The amendment to Rule 15B.5.6 preserves the original intent of Rule 15B.5.7, while providing greater recognition for water permits granted within the Valley and Tributaries Zone, Hakataramea FMU and Greater Waikāhahi Zone that have been through a rigorous consenting process and are subject to resource consent conditions that impose indirect limits on nitrogen leaching through restrictions on the type of farming activity that can occur on the property, GMP requirements and requirements to determine actions to reduce nitrogen losses.
 - The amendment to Rule 15B.5.6 is considered to improve the efficiency of the PC5 provisions through removing duplicate requirements to manage nutrient losses from farming activities under separate resource consents. As these water permits do not have direct numeric limits on the nitrogen losses, there is a potential for an additional environmental cost. However, in light of the conditions discussed above, this cost is considered minimal and is outweighed by the benefits of the approach.
 - The addition of Rule 15B.5.6A introduces an efficient process (controlled activity) for farming activities managed under a replacement water permit, provided there is no increase in nitrogen losses.
 - The recommended amendments to Rule 15B.5.6, addition of 15B.5.6A and deletion of 15B.5.7 is more aligned with the LWZC outcomes which focus resource consent requirements on land use change (Objective 3.12). Through providing further recognition for farming activities managed under existing water permits, the recommended amendments recognise water as an enabler of the social and economic wellbeing of the regions (Objectives 3.5 & 3.11).

Deletion of the Prohibited Activity Classification for farming activities that do not comply with 90% of the GMP Loss Rate

29. PC5, as notified, classifies farming activities that do not comply with 90% of the GMP Loss Rate from 2020 in the Greater Waikāhahi Zone and the Hakataramea River Zone as a prohibited activity.
30. In the Hakataramea FMU the Section 32 Report states:

¹² Section 32 Report, Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 13.2.3 pp13-17.

¹³ Section 32 Report, Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 13.2.1, pp13-11.

“This regime overall provides a method to hold the line at current water quality until any review of flows under the WCWARP is undertaken.”¹⁴

31. In regards to the application of this approach in the Greater Waikākahi Zone the Section 32 Report states:

“The reduction to 90% Good Management Practise Loss Rate for irrigation and winter grazing are required to offset the slight increases in nitrogen loss provided for as a permitted activity, for example, increases up to 20ha of winter grazing, in order to maintain the current load limit.”¹⁵

32. Based on the evidence of Shaw (2016) in Appendix G of the Reply Report, it is evident that the requirement to reduce to 90% of the GMP Loss Rate is not necessary to achieve water quality outcomes in both the Hakataramea River Zone and Greater Waikākahi Zone. Therefore, the Officers recommend the prohibited activity status is deleted and instead Rules 15B.5.15 and 15B.5.16 are amended so that the reduction to 90% of the GMP Loss Rate can be considered as a restriction on discretion or matter of control¹⁶.
33. In the Hakataramea River Zone the matter of control or restriction on discretion directs that farming activities comply with 90% of the GMP Loss Rate by 2020¹⁷. In the Greater Waikākahi Zone the requirement to reduce to 90% of the GMP Loss Rate is not required until 2026, on the basis that water quality limits are not met¹⁸.

Assessment of Effectiveness and Efficiency

34. In both the Hakataramea FMU and Greater Waikākahi Zone, it is considered that the recommended amendments continue to implement the relevant LWRP Objectives¹⁹ and the effectiveness assessment in the Section 32 Report remains valid. However, the framework as recommended to be amended is now considered to be more efficient as the provisions will achieve the relevant water quality outcomes whilst reducing unnecessary regulation.
35. Additionally, the recommended amendments are also considered to have greater regard to the community outcomes identified in the Zone Committee process (Objective 3.2). In relation to farming activities within the Greater Waikākahi Zone, the Lower Waitaki Zone Implementation Plan Addendum (ZIPA) recommends “a 10% reduction in nitrate-N loss, below GMP for high emitting land uses by 2026”²⁰. PC5,

¹⁴ Section 32 Report, Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 13.4.3, pp13-39.

¹⁵ Section 32 Report, Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 13.6.2, pp13-52.

¹⁶ Section 42A Reply Report- Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 6, page 122, paragraph 6.315.

¹⁷ Section 42A Reply Report- Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 6, page 119, paragraph 6.302.

¹⁸ Section 42A Reply Report- Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 6, page 121, paragraph 6.313.

¹⁹ Section 32 Report, Plan Change 5 to the Canterbury Land and Water Regional Plan at Section 13.4.1, pp13-32.

²⁰ Lower Waitaki Zone Committee, Zone Implementation Programme Addendum, page 13, recommendation 13.

as notified, required compliance with 90% of the GMP Loss Rate by 2020. In the Reply Report, the Officers recommend that the date that farming activities are required to comply with 90% of the GMP Loss Rate in the Greater Waikākahi Zone is amended to 2026 to ensure consistency with the ZIPA recommendation.

Amalgamation of rules applying to different Nutrient Allocation Zones and Freshwater Management Units

36. PC5, as notified, included seven sets of farming activity rules that apply to different nutrient allocation zones. The Reply Report recommends that the seven sets of rules are amalgamated to form three sets of rules which apply across multiple nutrient allocation zones or freshwater management units. The areas grouped are as follows:
- i. Grouping 1 - Ahuriri Zone, Upper Waitaki Hill Zone, Hakataramea FMU and Greater Waikākahi Zone.
 - ii. Grouping 2 - Haldon Zone and Mid-Catchment Zone.
 - iii. Grouping 3 - Valley and Tributaries Zone and Whitneys Creek Zone

Assessment of Effectiveness and Efficiency

37. The effectiveness of the recommended PC5 rule framework within each FMU remains largely unchanged from that described in the Section 32 Report (with the exception with the matters discussed in paragraphs 23-35 above). However the recommend amendments improve the efficiency of the provisions through removing duplication and simplifying the provisions where appropriate.

The application of recommended Orange Zone Rule 5.54A in the Haldon Zone and Mid Catchment Zone and the introduction of Rule 15B.5.33A in the Valley and Tributaries Zone.

38. PC5, as notified, applies several region-wide permitted activity rules from Part A of PC5 to farming activities in the Waitaki²¹. Part A permitted activity Rules 5.44A, 5.54A and 5.57B were only applied in areas where the technical analysis demonstrated that nitrogen losses from farming activities classified as permitted would be accommodated within the nitrogen load limit for the catchment (Table 15B(f)).
39. As discussed in paragraph 9 above, a replacement threshold has been recommended for the Part A permitted activity Rules 5.44A, 5.54A and 5.57B. Appendix G of the Reply Report includes a technical assessment which analyses the appropriateness of the recommended alternative permitted activity thresholds, in areas where Rules 5.44A, 5.54A and 5.57B apply in Part B.
40. In response to the technical analysis for the Waitaki, the replacement threshold in 5.54A is recommended to apply in the Haldon Zone and Mid-Catchment Zone and new Rule 15B.5.33A is recommended to apply in the Valley and Tributaries Zone. Recommended Rule 15B.5.33A provides for properties 10 hectares of winter grazing on all properties up to 100 hectares in area, a 10% threshold for properties between 100 and 600 hectares, and a 60 hectare maximum for all properties over 600 hectares.

²¹ Refer to paragraph 6.220 of the Reply Report for further detail.

Assessment of Effectiveness and Efficiency

41. The evaluation of the effectiveness and efficiency of the Haldon and Mid-Catchment Zone and Valley and Tributaries Zone are described in the Section 32 Report at Sections 13.3.3 and 13.5.1 respectively. Taking into consideration the revised permitted activity thresholds, the analysis contained in the Section 32 Report remains largely unchanged. However, the additional comments as outlined in paragraph 12 above apply here also.

