

Council opening statement to the Independent Hearing Panel for Plan Change 1 to the Hurunui and Waiau River Regional Plan

The majority of the following statement was prepared by Lisa Jenkins in her capacity as reporting planning officer. Some of the material was prepared by Ned Norton in his capacity as technical reporting officer and where that is the case it is made clear within the statement.

Overview

1. The purpose of this opening statement is to provide a brief introduction to Plan Change 1 and the issues raised in submissions. The statement will set out:
 - The context in which Plan Change 1 was developed
 - An overview of the Plan Change provisions
 - A summary of the substantive issues to be resolved and information to assist the Panel in resolving those issues
2. The Council has reviewed the evidence provided by submitters and does not intend to provide rebuttal evidence, nor does it intend to revise its recommendations in response to the evidence it has seen so far.

Context and driver for Plan Change 1

3. Plan Change 1 to the Hurunui and Waiau River Regional Plan (HWRRP) is the result of a multi-year collaborative process.
4. The HWRRP was the first plan to be developed under the Canterbury Water Management Strategy and the first Canterbury Regional Plan to include provisions managing the cumulative effects of land use on water quality.
5. The management of the cumulative impacts of land use on water quality is achieved in the HWRRP by permitting land uses¹ established before 2013 to continue to operate without resource consent. People undertaking these permitted activities must provide OVERSEER records to Environment Canterbury and must be associated with an industry collective group. Industry collective groups are required to develop and implement Environmental Management Strategies aimed at establishing and auditing farm environment plans for their members' properties.

¹ Land uses that result in discharges of nitrogen or phosphorus that may enter water

6. Where land use intensifies such that a Nitrogen or phosphorus discharge increases by more than 10% above the losses recorded in 2013, resource consent is required
7. Shortly after the HWRRP was made operative, concerns were raised about the impact of its implementation on dryland farmers. Specifically, dryland farmers were concerned they would not be able to continue to operate in the same manner they always have, and remain compliant with the permitted activity requirements. Effectively, small normal changes in farm operation (for example: re-stocking following a drought, adding additional winter feed, or changing the stock type ratio) could result in an increase in nutrient loss exceeding 10%. This concern was compounded when in 2014, phosphorus load in the Hurunui river exceeded limits (most likely due to weather conditions) and exceeding a 10% increase in nutrient losses at a property scale became a non-complying activity within the Hurunui River catchment.
8. A contingent of 300 dryland farmers attended a Zone Committee meeting in 2014 to express their concern that they were being unfairly prevented from operating normally, while higher emitters were able to expand their irrigated areas. In response, a nutrient working group, with more than 60 representatives from a range of interests, was established to try and find a way forward for dryland farmers. After meeting 10 times, the group had not come to an agreement.
9. In 2018, following two further years of community discussion and collaboration, the Hurunui Waiau Zone Committee recommended to the Canterbury Regional Council that a targeted Plan Change be pursued that would permit normal dryland farming to operate without the need for resource consent.
10. The Canterbury Regional Council then considered that recommendation and promulgated Plan Change 1 to the HWRRP.

Plan Change 1

11. The approach of the operative planning framework, which permits existing land use to continue without resource consent while managing land use intensification through the resource consent process, has been replicated in the proposed Plan Change.
12. Proposed Plan Change 1 to the HWRRP establishes an alternative permitted activity path for existing Low Intensity Dryland Farming. It does this by defining “Low Intensity Dryland Farming” and carving that activity out of the existing permitted activity framework (rules 10.1 and 10.2).
13. The Plan Change also establishes a different definition for “change of land use” when applied to Low Intensity Dryland Farming. For all other land uses that result in a discharge of nitrogen or phosphorus which may enter water, a change of land use is considered to have occurred if nutrient losses exceed 10% above losses in 2013. However, proposed Plan Change 1 provides that a low intensity dryland farming activity is considered to have changed its land use only where it no longer meets the definition of Low Intensity Dryland Farming. Essentially, a change of land use in the context of Low Intensity Dryland Farming is considered to have occurred where irrigation has been added or the winter grazing area exceeds 10% of the property area.

14. The Plan Change consists of the following:

- A new policy, Policy 5.3C, that acknowledges the low discharge nature of dryland farming systems and establishes clarity within the HWRRP for why dryland farming is treated differently to other land uses.
- A new rule, Rule 10.1A, which establishes the conditions on which Low Intensity Dryland Farming can operate without the need for resource consent. The conditions include a requirement to report on winter grazing area (either via the Farm Portal or via a Dryland Farmer Collective) and to prepare and implement a Management Plan. Reporting on winter grazing areas is necessary to enable the Canterbury Regional Council to fulfil its duty² to have a catchment scale nutrient accounting system in place. Management plans are necessary to ensure contaminant run-off risk is managed and the broader Objectives of the HWRRP are achieved.
- Consequential amendments to Rules 10.1, 10.2 and 11.1, made to restrict the scope of Plan Change 1 to dealing with Low Intensity Dryland Farming only (i.e. not altering the framework for other land uses). The amendments are also proposed in order to ensure Low Intensity Dryland Farming is only captured by these rules when a change in land use occurs. Finally, the consequential amendments also ensure that where a change of land use does occur, the information requirements for those changing land use from Low Intensity Dryland Farming are not such that land owners are expected to have records that were not necessary prior to the change in land use.
- The definition of “change of land use” is amended to provide an alternative definition for change of land use away from Low Intensity Dryland Farming, while retaining the operative definition for all other land uses.
- New definitions added for “Dryland Farmer Collective Agreement”, “Farm Portal”, “Low Intensity Dryland Farming” and “Winter Grazing”. The definitions of “Dryland Farmer Collective Agreement” and “Farm Portal” provide clarity to Rule 10.1A. The definitions of “Low Intensity Dryland Farming” and “Winter Grazing” help to define the scope of what is provided for by Rule 10.1A.
- A new Schedule 2A added to identify requirements for dryland farmer collectives that are aligned with the requirements of Rule 10.1A.
- A new Schedule 6 added to provide clarity around management plan requirements for compliance with Rule 10.1A.

Submissions

15. Fourteen submissions and five further submissions were made in relation to Plan Change 1. The majority of submitters were supportive of the concept of providing a more permissive pathway for dryland farmers to operate within, provided that it would not result in degradation of water quality.

² National Policy Statement for Freshwater Management 2014: Policy CC1

16. There were a number of issues raised in submissions. The s42A report addresses those issues and I do not intend to address each of the issues in this opening statement. However, there are a number of more substantive issues that the Panel will need to resolve in its deliberations. Those issues are addressed below.

Matters to be determined by the Hearing Panel

17. I now set out the key matters to be determined by the Hearing Panel. I have framed each of these matters as a question that the Hearing Panel will need to consider and determine, in light of the evidence and the legal framework.

Is there certainty that nitrogen load in the Hurunui catchment will be offset should Plan Change 1 be promulgated in a similar form to which it was proposed?

18. In the Hurunui catchment it was recognised that the nitrogen load limit has been fully allocated, and that maintaining water quality within limits would require a nitrogen load offset. Amuri Irrigation and Hurunui Water Project (now amalgamated into Amuri Irrigation, who have succeeded to all property, rights, powers, privileges, liabilities and obligations of Hurunui Water Project, including the Hurunui Consents³) have agreed to provide that offset by surrendering a portion of their consented Nitrogen load and this agreement had been formalised in a Deed of Undertaking. The Deed of Undertaking has been appended to the section 42A report. The Panel will note that the deed includes draft applications to partially surrender the relevant consents.

Has the right method been used to determine the nitrogen load that needs offsetting?

19. The process and method for identifying the nitrogen load required for offset evolved systematically over more than a year with the Hurunui Science Stakeholders Group. The process was demonstrably open as summarised in a memorandum by Ned Norton (12 April 2018)⁴. There is arguably more than one valid way to estimate nitrogen load and different methods will give different tonnages. What is most important in terms of technical validity, is that the method used to identify the offset tonnage is equivalent to the method for accounting the nitrogen load reductions to achieve that offset. In other words, 'apples' should be compared (offset) with 'apples'. The method used to calculate an offset requirement of 38 tonnes/year source nitrogen load is equivalent to the method used by Amuri Irrigation to account for their consented nitrogen load and for their agreed surrender of the 38 tonnes/year. The same method also allows an assessment of the total Hurunui catchment nitrogen allocation balance, after surrender of the offset requirement, compared to the existing HWRRP nitrogen load limit, as laid

³ Product Disclosure Statement for the Offer of A Shares Relating to the Hurunui Scheme. Amuri Irrigation Co. 31 May 2019

⁴ Summary of process to estimate the nitrogen load increase that would need to be offset in the Hurunui catchment as part of fixing the dryland farming 10% rule issue. Norton, N. 12 April 2018.

out in a memorandum by Ned Norton (28 November 2018)⁵. In all these respects the method used is the right one for the purposes of PC1⁶.

Should the Plan Change provide for dryland farmers to undertake a small amount of irrigation?

20. As set out in the s32 and s42A report, providing for irrigation in a targeted plan change process is not possible. Providing for irrigation of dryland would require a review of the entire nutrient management framework to ensure water quality could be maintained or improved. It is likely existing irrigated land use would need to make significant load reductions in order to provide headroom for new irrigation of dryland to occur within current plan limits.

Should dryland farmers be required to report the area they are using for winter grazing each year?

21. Policy CC1(b) of the National Policy Statement for Freshwater Management requires Regional Councils to account for freshwater takes and contaminants by:

“maintaining a freshwater quality accounting system and a freshwater quantity accounting system at levels of detail that are commensurate with the significance of the freshwater quality and freshwater quantity issues, respectively, in each freshwater management unit”

22. Recording the extent of winter grazing occurring on dryland farms will enable catchment level accounting of nutrient loads. Information collected will be used to estimate the total nutrient load at the catchment scale.
23. The Plan Change provides two options for dryland farmers to report their winter grazing area. Farmers will have the option of providing property specific information via the Farm Portal or providing information in aggregate via a Dryland Farmer Collective Group.

Should the Plan Change, through Schedule 6, require dryland farmers to identify mahinga kai values and practices for protecting those values in their Management Plans?

24. The provisions of Plan Change 1 must achieve the relevant Objectives of the Hurunui and Waiau Rivers Regional Plan. The relevant Objectives are:

Objective 5.1

Concentrations of nutrients entering the mainstems of the Hurunui, Waiau and Jed rivers are managed to:

- a. protect the mauri of the waterbodies;*

⁵ Nitrogen allocation in the Hurunui catchment and its relevance for dryland farming and a draft plan change to “fix the 10% rule”. Norton, N. 28 November 2018.

⁶ Note: this paragraph provides technical context and as such was prepared by Mr. Norton

- b. protect natural biota including riverbed nesting birds, native fish, trout, and their associated feed supplies and habitat;*
- c. control periphyton growth that would adversely affect recreational, cultural and amenity values;*
- d. ensure aquatic species are protected from chronic nitrate toxicity effects; and,*
- e. ensure concentrations of nitrogen do not result in water being unsuitable for human consumption.*

Objective 5.2

Concentrations of nutrient entering tributaries to the Hurunui, Waiau and Jed rivers are managed to ensure they do not give rise to:

- a. chronic nitrate toxicity effects on aquatic species; and,*
- b. water being unsuitable for human consumption.*

25. Identifying mahinga kai values and farming practices that could be put in place to protect those values will help to achieve the protection of the overall mauri of waterbodies. It will also assist in achieving the protection of natural biota.

Conclusion

26. Plan Change 1 to the Hurunui and Waiau Rivers Regional Plan is a Plan Change of limited scope, designed to address a specific implementation issue that arose after the Plan was made operative. The approach of the operative planning framework, which permits existing land use to continue without resource consent while managing land use intensification through the resource consent process, has been replicated in the proposed Plan Change.