

Report No.	19-103
Decision Required	

EXISTING INTENSIVE FARMING LAND USES PLAN CHANGE (PLAN CHANGE 2)

1. PURPOSE

- 1.1. This report seeks approval to publicly notify the **Proposed Existing Intensive Farming Land Use Plan Change (Plan Change 2)**.

2. EXECUTIVE SUMMARY

- 2.1. Plan Change 2 proposes amendments to address issues within the One Plan's nutrient management policy and rule framework, while retaining the plan's original intent – to balance productive farming with the quality and health of fresh water resources. As reductions in nutrients, pathogens and sediment are stalled until the provisions are amended and clarified, the plan change needs to be progressed as quickly as possible.
- 2.2. The plan change is focused on existing intensive farming land uses, and includes the following key amendments:
- Recalibrate Table 14.2 **Cumulative Nitrogen Leaching Maximums (CNLM)** with the most up-to-date version of Overseer; and
 - Introduce amendments that provide a viable policy and rule framework to assess existing intensive farming land use activities that do not achieve Table 14.2 cumulative nitrogen leaching maximums.
- Plan Change 2 does not propose any amendments to water quality targets, or the natural capital approach used to manage nutrients.
- 2.3. Council is asked to approve the plan change for public notification. Notification would occur in July and would be followed by an extended consultation period (from the standard 20 working days to 60 working days). It is anticipated that submissions will be heard by independent commissioners in February 2020, and the decision released in mid-2020. Submitters would have the opportunity to appeal the decision to the Environment Court.

3. RECOMMENDATION

It is recommended that Council:

- a. receives the information contained in Report No. 19-103;
- b. confirms that Proposed Plan Change 2 is consistent with the plan change scope, being:
 - i. amending the nutrient management policy and rule framework to provide a viable pathway under which resource consent applications for intensive farming land use activities that cannot achieve Table 14.2 cumulative nitrogen leaching maximums can be assessed under the One Plan; and
 - ii. updating the Plan's nitrogen leaching limits using the latest version of Overseer, so they are aligned with the latest science.
- c. resolves to proceed with Proposed Plan Change 2 having had particular regard to the evaluation report prepared under section 32 of the Resource Management Act 1991 (Act);

- d. approves Proposed Plan Change 2 for public notification in accordance with clause 5(1)(b)(i) of Schedule 1 of the Resource Management Act;
- e. resolves that minor amendments to the wording of Proposed Plan Change 2 and section 32 evaluation report consistent with the scope of the plan change can be made by the Chief Executive prior to notification, in response to further legal and expert advice;
- f. resolves that the submission period be set at 60 working days (acknowledging that the minimum period allowed is 20 working days), as provided for by clause 5(3)(b) Schedule 1 Resource Management Act 1991; and
- g. resolves to appoint a 'friend of the submitter' to support community participation in Plan Change 2.

4. FINANCIAL IMPACT

- 4.1. There is no impact on existing budgets as a result of this report.

5. COMMUNITY ENGAGEMENT

- 5.1. There has been consistent engagement with iwi, stakeholder groups and the wider community around the difficulties in implementing the One Plan's nutrient management provisions and how we might resolve them, including during the development of a draft plan change proposal.
- 5.2. Community engagement over and above the consultation requirements of Schedule 1 of the **Resource Management Act 1991 (RMA)**, discussed in sections 11 and 12 below, is expected to continue throughout the plan change process.
- 5.3. Further detail of engagement during development of the plan change is provided in the section 32 evaluation report.

6. SIGNIFICANT BUSINESS RISK IMPACT

- 6.1. Freshwater management issues attract public interest, and there is a lack of consensus around solutions or approaches. A loss of public or ministerial confidence in Horizons' ability to make timely and appropriate decisions would have significant ramifications. The business risk to Horizons is somewhat mitigated by ongoing engagement with the Minister for the Environment and Ministry officials, stakeholders and iwi during policy development.
- 6.2. Legal risk has been mitigated by seeking advice during development of the plan change provisions. It is intended that staff will continue work closely with our legal advisors as the formal planning process rolls out.
- 6.3. There is potential for a large number of consent applications to be received in a short timeframe following notification. This could have resourcing implications given strict RMA process timeframes, and the penalties and potential impact on Horizons' reputation from not meeting them.

7. CONTEXT OF PROPOSED PLAN CHANGE 2

- 7.1. The One Plan nutrient management framework balances productive farming with the quality and health of fresh water resources. While the original intent of the One Plan was not flawed, the provisions in the final, operative plan did not fully reflect this intent. This has been exacerbated by changes to the Overseer model since the plan was developed.

- 7.2. Horizons' application of the One Plan provisions, in considering nutrient management consents, was challenged by Fish & Game and the Environmental Defence Society. This resulted in a declaration by the Environment Court in March 2017 that effectively put an end to the consenting team considering any application for consent that did not meet the CNLM in Table 14.2.
- 7.3. Work was carried out during 2018 to update Table 14.2, as the first step in a staged plan review process to address the One Plan nutrient management framework issues, including exploring the use of a streamlined planning process. Subsequently, independent legal and planning advice commissioned by the Minister for the Environment was released in November 2019. This advice confirmed that:
- The changes to the Overseer model meant that most unconsented intensive farming land uses would not be able to meet Table 14.2; and
 - The policy framework does not, in practice, provide a viable pathway for consent to be granted for intensive farming land uses that cannot meet the CNLM in Table 14.2, even though the rules are written to provide for this to be considered.
- 7.4. This confirmed Horizons' view that reductions in nutrients, pathogens and sediment are stalled until the intensive farming land use provisions are put right.

8. SCOPE OF THE PLAN CHANGE

- 8.1. As previously discussed by Council, Proposed Plan Change 2 is narrowly focused to:
- Amend the nutrient management policy and rule framework to provide a viable pathway under which resource consent applications for intensive farming land use activities that cannot (and likely will not in future) achieve Table 14.2 cumulative nitrogen leaching maximums can be assessed under the One Plan.
 - Update the Plan's nitrogen leaching limits using the latest version of Overseer, so they are aligned with the latest science.
- 8.2. It should also be noted that the proposed amendments generally apply to the One Plan's nutrient management provisions for existing intensive farming land uses in target catchments only. The intent of the One Plan nutrient management provisions will not change as a result of Plan Change 2. There are no changes proposed to water quality targets, or the natural capital approach used to manage nutrients.
- 8.3. Adjusting the policy and rule framework for new intensive farming land uses (conversions) is set aside for Plan Change 3. This approach recognises the need to make progress while allowing time to undertake the more extensive work needed to determine how to manage equity issues and environmental effects arising from any new intensive land use that does not meet the CNLM in Table 14.2.

9. PROPOSED PLAN CHANGE 2 CONTENT

- 9.1. The proposed wording for Plan Change 2 is attached as **ANNEX A**. The accompanying evaluation of the objectives of the plan change required by section 32 RMA will be attached as supplementary **ANNEX B** prior to the Regional Council meeting.
- 9.2. The purpose of the section 32 evaluation is to:
- Say why the plan change is needed;
 - Identify the potential options to address the issues;
 - Evaluate the options; and

- Record why the proposed plan change is the most appropriate way to achieve water quality objectives in the One Plan.

9.3. The key components addressed in the section 32 are:

- Remedy the adverse effect Overseer model improvements have on implementation of Table 14.2 cumulative nitrogen leaching maximums;
- Lack of a viable pathway for consent applications for intensive farming land use activities that cannot achieve Table 14.2 cumulative nitrogen leaching maximums; and
- The need to make the changes as soon as practicable so water quality improvements in targeted Water Management Sub-zones are achieved as intended in the One Plan.

9.4. The key changes in Proposed Plan Change 2 are:

- Recalibrate Table 14.2 CNLM with the most up-to-date version of Overseer; and
- Introduce amendments that provide a viable policy and rule framework to assess existing intensive farming land use activities that do not achieve Table 14.2 cumulative nitrogen leaching maximums.

9.5. Once the provisions have been notified, they have legal effect – that is, they will be considered alongside the current (operative) policies and rules during consent application processes.

10. DECISION MAKING

10.1. Council has a number of key decisions to make during the Plan Change 2 process:

- Notification of the proposed plan change;
- Appointment of hearing commissioners to make decisions regarding submissions on the plan change; and
- Approving the final plan change so it can be made operative at the end of the process.

Council can also consider whether to withdraw the plan change at any point before resolving to approve the changes and making them operative (or before Environment Court hearings commence, if there are any appeals).

10.2. There will be regular reporting to Council at key points throughout the plan change process, so members are well informed of progress and the formal responses of the community, stakeholders and iwi to the proposed changes through submissions.

11. CONSULTATION

11.1. Formal consultation is a requirement of the plan change process and is prescribed by Schedule 1 RMA. Requirements include pre-notification consultation with, as a minimum, the Minister for the Environment and any other affected Ministers, local authorities and tangata whenua. It is considered that the community engagement process described in section 5 above will meet these requirements.

11.2. The proposed plan change and supporting evaluation ('section 32') report must be publicly notified, and there must be a period when any person may make a submission on the proposal. Following this, a summary of submissions must be made publically available so further submissions can be made in support or opposition of the content of a submission. Further submissions can be made by anyone representing a relevant aspect of the public interest or with a greater interest than the general public. Submitters and further submitters will be able to present their submission (views or evidence) at a hearing.

11.3. The closing date for submissions must be at least 20 working days after notification of the plan change. Notification in July will coincide with an extremely busy period for many in the

farming community, the sector most likely to be directly affected by the proposed changes. It is therefore recommended that the notification period be extended to 60 working days to ensure robust and effective participation in the plan change process is possible. The 10 working day period for further submissions is set by the RMA and cannot be extended.

12. COMMUNITY SUPPORT

- 12.1. There is an opportunity to support the communities affected by plan changes, recognising that, no matter what their focus, these processes can affect individuals and businesses. Councillors are asked to consider appointing an independent planning consultant (referred to as 'the friend of the submitter'), to assist those who are unfamiliar with planning process and how to become involved, or who find engagement with local or central government stressful.
- 12.2. The friend of the submitter's role is to advise people on the process for lodging submissions, how they might present their views in a submission, and what happens after a submission is lodged. This is likely to be helpful to individual farmers or members of the community who wish to make their views known to the hearing panel but are unsure how to go about it or what is involved. The friend's role does not include providing advice on the submitters' views.

13. TIMELINE / NEXT STEPS

- 13.1. The following table sets out proposed dates for key steps in the Plan Change 2 process:

Notification of Plan Change 2	22 July 2019
Close of submission period (60 working days)	21 October 2019
Further submission period (10 working days)	4 - 17 November 2019
Hearing of submissions by independent commissioners	Six days over the two weeks commencing 17 February 2020
Decision on submissions by independent commissioners	Mid-2020

- 13.2. Following notification of the decision of the hearing panel on submissions, there will be an opportunity for submitters to lodge an appeal to the Environment Court.

14. RISKS AND MITIGATIONS

- 14.1. Officers have identified a range of risks for Plan Change 2, including technical complexity, scope, uncertainty, resourcing and timing. These, along with their mitigations, have been previously discussed with Council and will continue to be managed.

15. SIGNIFICANCE

- 15.1. This is not a significant decision according to the Council's Policy on Significance and Engagement as the plan change process is regulated by the RMA rather than the Local Government Act 2002.

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ANNEXES

- A Proposed Wording for Plan Change 2
 B Evaluation of the Objectives of the Plan Change Required by Section 32 RMA (Supplementary)