

Report No.	21-44
Decision Required	

PLAN CHANGE 2 - RECOMMENDATIONS OF THE HEARING PANEL

1. PURPOSE

- 1.1. The purpose of this paper is for Council to consider and make decisions on the recommendations of the Independent Hearing Panel for **Proposed Plan Change 2 (PC2)**.

2. EXECUTIVE SUMMARY

- 2.1. The overriding resource management issue that PC2 sought to address was the absence of a viable consenting pathway for existing intensive land use activities (IFLUs) in the One Plan.
- 2.2. Section 73 of the Resource Management Act (RMA) provides for Councils to initiate plan changes as necessary and appropriate.
- 2.3. Council publicly notified PC2 on 22 July 2019.
- 2.4. 84 submissions and 32 further submissions were received.
- 2.5. Following notification, the proposed plan change went through the appropriate Schedule 1 process under the **Resource Management Act 1991 (RMA)**.
- 2.6. A hearing panel of three commissioners (Dr Brent Cowie – Chairperson and Independent Commissioner, David McMahon - Independent Commissioner and Elizabeth Burge - Independent Commissioner) was delegated the authority to hear and make recommendations on submissions and further submissions by Council. The panel held the hearing between 12 October 2020 and 22 October 2020.
- 2.7. The hearing panel was provided with comprehensive section 42A reports and evidence from Council officers and expert advisers. All parties provided a valuable perspective with their input.
- 2.8. Multiple pre-hearing meetings and expert conferencing were held prior to evidence exchange, involving Iwi, industry, NGOS, planners, economists and water quality experts.
- 2.9. Evidence covered water quality, farm management practices (including the use of Overseer), and the social and economic implications of the proposed plan change.
- 2.10. On 19 March 2021 the hearing panel delivered its recommendations to Council on PC2. In accordance with Schedule 1 Clause 10, Council has a maximum of two years from the date of public notification to notify submitters of a decision.
- 2.11. Should the Council adopt the hearing panel's recommendations, then the recommendations will become the Council Decision.

3. RECOMMENDATION

That the Committee recommends that Council:

- a. receives the information contained in Report No. 21-44;
- b. receives the Recommendation Report of the Independent Hearing Panel appointed by the Manawatū-Whanganui Regional Council pursuant to section 34A of the Resource Management Act 1991, containing recommended decisions on Plan Change 2, One Plan – Existing Intensive Farming Land Uses, dated March 2021;
- c. Pursuant to Schedule 1 to the Resource Management Act 1991, adopts the recommendations and reasons in the Hearings Panel's Recommendation Report (including appendices) as its decision on Plan Change 2 to the Operative One Plan, including the Hearing Panel's evaluation under section 32AA;
- d. resolves to publicly notify its decisions on submissions and further submissions on Plan Change 2 to the Operative One Plan and serves a copy of the decision on all submitters and further submitters.

4. FINANCIAL IMPACT

- 4.1. The budget for PC2 is likely to be exceeded by approximately \$75,000 - \$100,000. At this stage Horizons has not budgeted for the costs of appeal. Should an appeal(s) eventuate then officers will provide further advice to Council.

5. COMMUNITY ENGAGEMENT

- 5.1. The plan change process has been through the appropriate engagement process via Schedule 1 of the RMA. Community engagement has included Iwi, stakeholder groups and the wider community throughout the plan change process.

6. SIGNIFICANT BUSINESS RISK IMPACT

- 6.1. If Council decides to decline the recommendations of the hearing panel, this would present significant risk.
- 6.2. Horizons has appointed a suitably skilled and qualified panel to hear and consider the issues and evidence on its behalf. Councillors have not been involved in hearing the evidence. It would be unusual for Council to challenge aspects of the plan change given it appointed an expert panel. However, it is open to Council to decline the Hearing Panel's recommendations. Council would need good reasons for reaching this conclusion, such as where the Hearing Panel has made an obvious or material error of law.
- 6.3. If Council decides not to accept any recommendations of the Panel, the Council would need to consider the submissions and rehear the matter.

7. CLIMATE IMPACT STATEMENT

- 7.1. The plan change is not aimed at reducing the climate change effects of intensive land uses.
- 7.2. The plan change is not expected to cause adverse climate impacts.

8. BACKGROUND

- 8.1. The One Plan is the consolidated Regional Policy Statement, Regional Plan, and Coastal Plan for the region. The One Plan sets out the strategic direction, and methods, for the regulatory management of the use and development of natural and physical resources in the Region.
- 8.2. PC2 is focused on **intensive farming land use (IFLU)** provisions in the One Plan that manage nutrient loss for existing IFLU in target catchments. IFLU activities defined in the One Plan are dairy farming, commercial vegetable growing, cropping and intensive sheep and beef farming.
- 8.3. Intensive farming can often require a high level of inputs (e.g. fertiliser), and generate high levels of outputs (e.g. effluent, nutrient surplus). In particular, diffuse nutrient leaching from land use, including from IFLU activities, is identified as a contributor to the degradation of surface water and ground water in the region. The One Plan's policy framework for managing diffuse nutrient leaching is based on the 'natural capital' approach, whereby nitrogen leaching loss limits are estimated for IFLU activities according to the **land use capability (LUC)** classification and the productive potential of the land. The rule framework for managing IFLU can largely be found in Chapter 14 of the One Plan.
- 8.4. Implementation of the provisions of Chapter 14 were the focus of declaration proceedings before the Environment Court in 2017, which in general terms addressed the way in which the One Plan provisions were being applied by Horizons when processing resource consent applications for existing IFLU. The Declaration proceedings served to highlight that the provisions for managing diffuse contaminants for IFLU were essentially unworkable.
- 8.5. Following the Environment Court Declaration proceedings, Horizons obtained expert planning and legal advice which confirmed the problematic policy and rule framework. The primary issue identified was that the One Plan policies for managing existing IFLU activities are not working in the manner intended at the time the One Plan was made operative. The One Plan intended for most farms using good management practice to be able to meet Table 14.2 and be considered as controlled activities. The reality is that the combined impact of the Overseer® upgrades and the directive One Plan policies mean that few existing IFLU activities would achieve consent, either as controlled activities (meeting Table 14.2 limits) or as restricted discretionary activities (exceeding the Table 14.2 limits).
- 8.6. In order to address the issues described above, Horizons resolved in 2018 that a plan change was necessary to enable the remaining unconsented IFLU activities to be regulated.
- 8.7. In accordance with the hearing panel's directions, Horizons held pre-hearing meetings with submitters and their experts, including Iwi submitters. Pre-hearing meetings commenced in March 2020 and concluded in August 2020. Expert conferencing sessions were held on six topics. At the conclusion of these sessions joint witness statements were available to the public. This plan change was formally notified on 22 July 2019.
- 8.8. PC2 is an interim initiative. Horizons has a wider work program underway, which includes reviewing the effectiveness of the One Plan and what is required to give effect to the National Policy Statement Freshwater Management 2020 (NPS-FM). That work programme must conclude with a publicly notified freshwater plan no later than December 2024. However, any further delay to addressing how diffuse contaminants are measured, allocated and regulated will leave unconsented farms in a state of ongoing uncertainty and leave some areas vulnerable to further water quality decline due to nitrogen leaching from IFLU.

9. DISCUSSION

- 9.1. The report and recommendations of the Hearing Panel are attached in full as **Annex 1**
- 9.2. The key outcomes of the panel's recommendations are:

13 April 2021

- 9.2.1. The Interim nature of PC2 is intended to address problems with One Plan workability.
- 9.2.2. PC2 is not the mechanism by which Horizons is required to implement the NPS-FM 2020.
- 9.2.3. PC2 will contribute to improved water quality in and downstream of the target catchments (although this improvement will be modest).
- 9.2.4. Controlled activity is the appropriate 'entry-level' consent category for existing IFLU.
- 9.2.5. Existing, unconsented IFLU activities that do not comply with CNLMs in Table 14.2 or elect to pursue the alternative consenting pathways should have a limited window to apply for controlled activity consents (by 31 December 2022).
- 9.2.6. Discretionary activity is appropriate for considering existing IFLU that cannot meet cannot meet either recalibrated Table 14.2, or specified N leaching percentage reduction (i.e. the alternative controlled activity pathways). This remains unchanged from the original intent of PC2 as notified.
- 9.2.7. Consents granted under PC2 should have limited duration (not exceeding a ten years).

10. CONSULTATION

- 10.1. The plan change has been subject to extensive community engagement. The submissions received are in response to the consultation undertaken.

11. TIMELINE / NEXT STEPS

- 11.1. At the time that the Council makes decisions on the recommendations of the hearing panel, Council must publicly notify its decision and serve every submitter a copy of the public notice with a statement the timeframe which an appeal may be lodged to the Environment Court, in accordance with Clause 11 of Schedule 1, as soon as reasonably practicable.
- 11.2. The Environment Court appeal period runs for 30 working days from the date a submitter is served with notice of the decision.
- 11.3. Should the Environment Court receive appeals on PC2 Horizons will enter in to the Environment Court appeal process. The process to resolve appeals may involve mediation and/or a hearing which can take considerable time and effort.

12. SIGNIFICANCE

- 12.1. This is not a significant decision according to the Council's Policy on Significance and Engagement.

Melanie McCormick

POLICY PLANNER IWI AND HAPU RELATIONSHIP ADVISOR

Charlotte Almond

MANAGER, POLICY & STRATEGY

Nic Peet

GROUP MANAGER STRATEGY AND REGULATION

ANNEXES

A Plan Change 2 Recommendations