

Report No.

18-112

Decision Required

PROPOSED PLANNING PACKAGE TO ADDRESS INTENSIVE LAND USE RULES AND POLICIES AND WIDER CATCHMENT PLANNING

1. PURPOSE

- 1.1. This paper updates Members on developments in relation to intensive land use rules and policies (nutrient management) under the One Plan and seeks agreement to a three-stage programme toward full resolution of the issues.

2. EXECUTIVE SUMMARY

- 2.1. Staff have been working towards a series of options in relation to the intensive land use provisions in the One Plan.
- 2.2. These options have previously been discussed in workshops with Members. Members have also received a number of papers outlining the challenges with the intensive land use rules as currently written in the One Plan and seeking direction to prepare plan changes.
- 2.3. The options under discussion have been to either: (i) update Table 14.2 to align with the most recent version of OVERSEER; (ii) update Table 14.2 and revise rules and policies to allow for consent applications to be made by landowners unable to meet Table 14.2; or (iii) review the nutrient management framework through '*Our Freshwater Future*'.
- 2.4. This paper recommends that rather than view (i)-(iii) above as options, Members instead consider them as a staged package of change:
- Stage One – Plan Change 2 (PC2): update Table 14.2 through either a standard or streamlined plan-change process, notified (/lodged) by the end of this calendar year;
 - Stage Two – Plan Change 3 (PC3): make broader changes to the One Plan to ensure a workable pathway exists through Rule 14-2, likely notified toward the middle of 2019;
 - Stage Three – *Our Freshwater Future*: review our approach to achieving better freshwater outcomes (including regulation of land use) through collaborative catchment processes, starting in the Manawatū by the end of this year, to be completed across catchments by 2025.
- 2.5. This three-stage process will allow us to narrow the gap (environmentally, and in the number of affected farms), then resolve workability issues (with Rule 14-2), while a more thorough review of water quality interventions is completed.

3. RECOMMENDATION

That the Committee recommends that Council:

- a. receives the information contained in Report No. 18-112 and Annexes;
- b. directs the Chief Executive to proceed toward notification of a plan change to update Table 14.2 of the One Plan as soon as possible;
- c. directs the Chief Executive to develop a plan-change proposal to ensure Rule 14-2 of the One Plan that provides a realistic consenting pathway aligned to the Regional Policy Statement;
- d. directs the Chief Executive to finalise the regional approach to *Our Freshwater Future*, and continue with preparatory work for a collaborative planning process for the Manawatū.

4. FINANCIAL IMPACT

- 4.1. Provision has been made for freshwater planning through the Long-Term Plan (LTP). The approach proposed in this paper is more resource-intensive than we anticipated in preparing the LTP, but are currently planned to be absorbed within current budgets. Cost forecasts are being developed, but are not yet available.
- 4.2. Final costs are usually dependent on whether formal RMA plan changes are appealed through the Courts.

5. COMMUNITY ENGAGEMENT

- 5.1. Workshops were held in May to canvas the views of key parties on *Our Freshwater Future*. Key in this discussion were iwi. Feedback has been informally shared with Councillors and informs the discussion documents attached to this paper. These are not Horizons policy, but an aid in engaging with the community to develop that policy.
- 5.2. Two further hui are in train for organisations connected to Environment Network Manawatū.
- 5.3. A critical outcome of discussions is that in some parts of the region, notably the Whanganui catchment with Te Awa Tupua Settlement Act, wider catchment planning discussions will need to wait until the mechanisms arising from Treaty settlement have been fully established.
- 5.4. Further discussions continue to be held as opportunities present themselves and will inform the advice we bring to Council later this year.
- 5.5. Over the coming weeks and months, we will be particularly focused on early engagement to support notification of stage one – plan change 2, as well as design of a collaborative planning process for the Manawatū catchment.
- 5.6. Meetings have also been held with a group of primary sector organisations and also with EDS, Fish and Game, the Minister for the Environment and officials of the Ministry for the Environment. These meetings have variously canvassed approaches to table 14.2, planning issues and wider catchment planning.

6. SIGNIFICANT BUSINESS RISK IMPACT

- 6.1. A number of risks exist in a project of this nature and need to be actively managed where Horizons can influence risk. Risks will change in significance over time. Key risks at this stage of the project are detailed below
 - 6.1.1. Erosion of collaborative approach to catchment planning given positioning by lobby groups. Officers will continue to work with groups where possible and are engaged with Ministry for the Environment officials who are seeking to mediate discussions.
 - 6.1.2. Timeframes become extended creating legal risk to Council, additional costs, and ongoing community concern. There are multiple sources of delay in a project which requires region wide engagement and has multiple moving parts. Officers will actively report progress and associated changes to Council.
 - 6.1.3. Plan changes are the subject of legal challenge / appeals to the Courts. The ability to challenge and appeal is part of the democratic process set out in the resource management Act. Officers will seek to work with parties to narrow down areas of contention.
 - 6.1.4. Changing government policy framework. Government has already signalled its intention to alter the National Policy Statement for Freshwater Management. The issues of Maori rights and interests in water has yet to be resolved. Council may need to adapt its approach as government policy evolves.

7. BACKGROUND

- 7.1. This Committee has received updates on progress with freshwater planning in February (report 18-14) and April (report 18-60) this year. Two Council workshops have recently been held: on 13 June, to discuss possible approaches to issues with the One Plan's nutrient management framework, and on 19 June, to discuss catchment planning.
- 7.2. In previous advice, we have indicated that we see catchment planning ('*Our Freshwater Future*') as the process by which we take stock of progress with freshwater management to date and work with communities to decide what we do next to achieve the outcomes they seek. Through this process, we will also fulfil the requirements of the National Policy Statement for Freshwater Management. We have recommended that the process be collaborative; the resulting catchment plans should be outcome-focused (rather than focused on specific tools, such as regulation) and adaptable. Relationships will need to endure beyond plan development, to support effective implementation.
- 7.3. In the meantime, difficulties with the One Plan's nutrient management framework need to be addressed. These centre on Table 14.2 (nitrogen leaching maxima) and Rule 14-2 (restricted discretionary consents for existing farms). In our view, those elements of the Regional Plan fail to provide a viable consenting pathway for most existing farms, contrary to the intent of the Regional Policy Statement.
- 7.4. These issues have been extensively caucused with expert planners and reported to Council. The detail of these issues is set out in the Section 35 report at Annex A. The resulting impasse impedes environmental progress and presents unnecessary uncertainty for landowners. It also puts Council in the position of being legally obliged to implement a Plan that we believe delivers significant unintended consequences. There is, consequently, some urgency in finding resolution.
- 7.5. The Environment Court's eventual decision on Horowhenua District Council's application for consent to discharge Foxton's wastewater to land may be a further consideration, since the application envisages nitrogen leaching in excess of the Table 14.2 targets. Although something of a special case, the Court's decision, when released, may have implications for how the One Plan's intensive land-use provisions are interpreted.

8. DEVELOPMENTS

- 8.1. On 21 June, Horizons' Chairman, Chief Executive and senior staff attended a meeting with the Environmental Defence Society (EDS) and Fish & Game hosted by Environment Minister Parker. The Minister had previously signalled a desire to see progress—environmentally, and in addressing difficulties with the One Plan—and willingness to work with parties to find a solution.
- 8.2. It became apparent during the meeting that there is still considerable distance between the parties' views on the workability and effects of the One Plan's current provisions, especially in relation to Rule 14-2. This is disappointing, given the effort made to reach agreement through planner caucusing last December. EDS and Fish & Game made us aware during the meeting that they had written to the Minister, requesting that he appoint a third party to exercise Horizons' functions in relation to the control of land use for the enhancement of water quality.
- 8.3. Horizons staff have subsequently met with Ministry for the Environment (MfE) officials to explain in more detail our interpretation of the Plan and the practical difficulties it presents. We understand that MfE is having similar conversations with EDS and Fish & Game. A further meeting / workshop with EDs, Fish and Game and MfE officials is likely.
- 8.4. Officers will continue to work constructively with these parties noting that plan change processes are public, involve multiple other parties, and that the decision to notify (or lodge) a proposed plan change lies with Council.
- 8.5. The Resource Management Act 1991 (RMA) requires significant work before a plan-change proposal is notified. The issues must be clearly established and possible solutions evaluated. Social, cultural, environmental and economic effects of the options must be considered. We must consult with affected parties. Our analysis to date has been made available to Councillors, and released to EDS under LGOIMA. Since we last reported to Council, a full evaluation of issues with the One Plan's nutrient management rules, conducted in accordance with section 35 of the RMA, has been completed. This is attached as Annex A. We are in the process of making all of this information more easily accessible to the public through Horizons' website.

9. PROPOSED APPROACH

- 9.1. In previous discussions, we have outlined three alternative pathways to Councillors, each with advantages and shortcomings:
 - A plan change narrowly focused on updating Table 14.2 to reflect changes in OVERSEER;
 - A broader plan change to update Table 14.2 and make adjustments to the restricted-discretionary consenting pathway for existing farms; or
 - Await more comprehensive review of the nutrient management regime through catchment planning.
- 9.2. We now suggest that the best course of action may be to treat these three alternatives as three *stages*.
- 9.3. The first stage is in our view only a partial solution, but it would clear the way for a significant proportion of existing farms in target catchments to seek the controlled activity consents. Progressing changes to Table 14.2 and the Rule 14-2 pathway separately—with a clear rationale as to how they relate to each other—would allow us to 'narrow the gap' in terms of policy issues, the number of farms affected, and environmental performance. Progress could be made with consenting while we work through the more challenging issues surrounding Rule 14-2.

14 August 2018

- 9.4. Annex B compares the current version of Table 14.2 with figures calculated using OVERSEER 6.3. Staff are working to finalise analysis and documentation required to support a plan change updating the Table (stage one). This plan change may be a candidate for the new Streamlined Planning Process (SPP): we are exploring this option with MfE officials, and will provide further advice to Council prior to notification.
- 9.5. Early engagement with affected parties will extend timelines beyond what might be theoretically possible. It is, however, important both for the overall efficiency of the process and to ensure that efforts to respond swiftly to immediate issues do not derail the relationships we need for longer-term success. Over the coming weeks, we will step up our engagement with iwi and the agricultural sector in particular.
- 9.6. We anticipate being in a position to notify a plan change to update Table 14.2—or lodge an SPP application to that effect with the Minister—in November this year.

Stage Two – Plan Change 3

- 9.7. The second stage would make a broader set of changes to the One Plan to ensure that a practicable consenting pathway exists through Rule 14-2. This would need to deal with the difficult question of whether—in real-world situations—consents can be issued that allow leaching in excess of the Table 14.2 targets. The purpose of these changes would not be to ensure that every applicant is successful in obtaining consent, but rather that the pathway makes it possible for applicants to commit to a trajectory towards the required environmental performance within a reasonable timeframe.
- 9.8. EDS and Fish & Game now appear to support updating Table 14.2 (the first stage described here); we understand that they do not accept that any practical impediment exists to implementation of Rule 14-2 (consenting farms on a trajectory towards the Table). While staff are confident of our position, we remain open to the possibility that there *is* a way through the policy pathway. None is evident to us nor has been proposed with the exception of very limited circumstances in catchments with very few farms and water quality that meets values in One Plan schedules. This issue has been extensively canvassed by external expert planners and reported to Council. Officers will continue to prepare a proposed plan change whilst being open to advice that can demonstrate a realistic pathway for consent applications to be considered.

Stage Three – Catchment Planning ‘Our freshwater Future’

- 9.9. The third stage entails thorough review of our approach to managing freshwater, including nutrient losses from land use. This will occur in the context of environmental limits (or targets) relevant to the particular catchment, and as one of a suite of methods available to the community to achieve better outcomes in that place. It will benefit from our own experience, the NPSFM, and evolving practice around the country. It may also be supported by a National Environmental Standard for nutrient allocation.
- 9.10. While the details of our approach to nutrient management (and what farmers are required to demonstrate) may change, there should be no expectation that expected environmental performance standards will soften: further improvements will need to be made, by all sectors. In many catchments significant reductions in contaminant loads will still be required at a sub-catchment scale. The question of whether changes in land use are required in order to achieve the community’s desired environmental outcomes needs at some point to be tackled. If land use is to change, realistic transition pathways must exist. We believe the catchment planning process is the appropriate setting for this conversation.
- 9.11. A clear catchment planning strategy, and demonstrable commitment to it, will be important to managing scope of interim changes and maintaining progress towards longer-term outcomes.

- 9.12. Discussions with iwi over the next few weeks will also allow us to confirm our proposed approach to catchment planning across the region, and flesh out details of the likely process for the Manawatū (stage three). The discussion documents attached to this report as Annexes C and D are intended to assist those conversations. We anticipate providing further (and firmer) advice to Council in September. While public communication of how the various processes fit together will remain challenging, we suggest that it is important to press ahead with the groundwork to enable the first of our catchment planning processes to be launched as soon as possible, possibly alongside notification of a plan change later this year.
- 9.13. As noted in 5.3 above, discussions about catchment planning in the Whanganui catchment are on hold until Te Awa Tupua mechanisms are bedded in.

Resourcing

- 9.14. The three-stage process outlined above appears, on balance, the best available to us. Councillors should note, however, that it will also be resource intensive. Even with the provisions made in the recently approved Long-Term Plan for freshwater planning, we have a relatively small policy team and a lot of work ahead of us. Other parts of the organisation that will be required to assist (e.g. science, communications) Prioritisation will likely be necessary—not just within the freshwater policy programme, but across the organisation more broadly.

10. CONSULTATION

- 10.1. This report draws indirectly on external planning and legal advice.

11. TIMELINE / NEXT STEPS

- 11.1. Key milestones associated with the advice provided above are:
- October 2018: Council decision whether to notify / lodge proposed changes to Table 14.2
 - November 2018: Notification / lodgement of a plan-change proposal to amend Table 14.2
 - Late 2018: Launch of a Manawatū catchment planning process
 - Mid 2019: Possible notification of a plan-change proposal to amend Rule 14-2
 - Late 2019: Launch of a Horowhenua catchment planning process
 - Late 2021: Projected completion of Manawatū and Horowhenua catchment planning processes
 - Mid 2022: Possible notification of plan changes to implement Manawatū and Horowhenua catchment plans
- 11.2. These timeframes are provisional and will be revised as each element is progressed.
- 11.3. A full timeline from Declarations to Notification is attached for Members' reference as Annex E.

12. SIGNIFICANCE

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

Tom Bowen
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ANNEXES

- A Section 35 Report: Intensive Farming
- B The Effect of OVERSEER Version Change on Table 14.2
- C Our Freshwater Future Discussion Document
- D Te la O Manawatu Discussion Document
- E Timeline: Declarations to Notification