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Manawatū-Whanganui (Horizons) Regional Council
Private Bag 11025
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Manawatū-Whanganui (Horizons) Regional Council
Submission on: Proposed Plan Change 2 - Existing Intensive Farming Land Uses

Please find attached a submission from Wellington Fish and Game Council on the Proposed Plan Change 2

Yours sincerely

A handwritten signature in black ink, appearing to be 'Phil Teal'.

Phil Teal

Regional Manager

Statutory managers of freshwater sports fish, game birds and their habitats

Wellington Region

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SUBMISSION ON PROPOSED PLAN CHANGE 2 TO THE HORIZONS ONE PLAN



TO: Manawatu-Whanganui (Horizons) Regional Council

FROM: Wellington Fish & Game Council
PO Box 1325, Palmerston North 4440
pteal@fishandgame.org.nz

NAME OF SUBMITTER: Wellington Fish and Game Council

- 1 This is a submission on the Proposed Plan Change 2 (**PC2**) to the Horizons One Plan (**One Plan**).
- 2 Wellington Fish and Game Council could not gain an advantage in trade competition through this submission.
- 3 This submission relates to all of the provisions of PC2. The provisions of particular concern to Wellington Fish and Game Council are:
 - a. The cumulative nitrogen leaching maximums in Table 14.2.
 - b. Agricultural Activities Rules 14.1, 14.2, 14.2A.
 - c. Policies 5.8 and 14.6.
 - d. The definition of 'good management practices' and 'nutrient management plan.'
- 4 Wellington Fish and Game Council's submission is set out in Appendix 1 and Wellington Fish and Game Council incorporates these reasons into its submission.
- 5 Wellington Fish and Game Council seeks the relief from Manawatu-Whanganui (Horizons) Regional Council (**Horizons**) set out in Appendix 1, or such similar, other, further, and /or consequential relief as necessary to address this submission.
- 6 Wellington Fish and Game Council wishes to be heard in support of its submission.
- 7 If others make a similar submission, Wellington Fish and Game Council will consider presenting a joint case with them at hearing.

DATED 21 October 2019

A handwritten signature in black ink, appearing to be 'Phil Teal', written over a horizontal line.

Phil Teal

For Wellington Fish and Game Council

APPENDIX 1: WELLINGTON FISH AND GAME COUNCIL SUBMISSION

INTRODUCTION

1. Wellington Fish and Game Council is a statutory body established under the Conservation Act 1987 to manage, maintain and enhance sports fish and game bird resource in the recreational interests of hunters and anglers.
2. Wellington Fish & Game Council represents over 8,000 licence holders in its advocacy function to maintain and enhance habitat for sports fish and game birds. In this capacity Wellington Fish and Game Council has actively participated in regional planning process relating to freshwater management. The involvement has included:
 - a) Submissions and hearing on the original plan
 - b) The original Environment Court hearing (NZEnvC 182, 2012)
 - c) The High Court hearing (NZHC 2492, 2013)
 - d) The Environment Court declarations on plan implementation (NZEnvC 37, 2017)
 - e) Extensive meetings, workshops, and media throughout that time.
3. The 2017 declarations are the the genesis of PC2.
4. This submission is made on PC2 to the Horizons One Plan which introduces:
 - a. Changes to the cumulative nitrogen leaching maximums (**LUC limits**) in Table 14.2 to reflect the most recent OVERSEER calculations
 - b. A new consenting pathway for discretionary resource consents for intensive farming land use activities that do not meet the LUC limits in Table 14.2

SUBMISSION

5. PC2 arises in the context of a region with poor lowland water quality and where intensive farming activities are increasing with little or no control. The management of freshwater quality under the One Plan is a contentious issue and has been the subject of extensive litigation for the past decade.
6. The One Plan contains a nitrogen allocation framework (underpinned by the LUC limits in Table 14.2) that seeks to improve water quality. An activity that does not meet these limits is assessed as a restricted discretionary activity, with specific criteria applied. PC2 seeks to amend this framework by providing a pathway for consents that exceed the LUC limits as a discretionary activity provided that "good management practices," and additional innovations and measures (if they represent the best practicable option), are implemented to minimise the non-compliance with the LUC limits.
7. This allocation framework will enable further degradation of water quality, and is not in line with the purpose of the RMA or section 30(c)(ii) and (iia) of the RMA, which give a regional council control of the use of land for the purpose of maintaining and enhancing water quality and ecosystems in water bodies. PC2 also does not give effect to Objectives AA1, A1 and A2 of the current National Policy Statement on Freshwater Management 2014 (**NPSFM**).

8. Wellington Fish and Game Council notes that caution should be taken to avoid duplication of plan changes in light of the Government's proposed Essential Freshwater reforms which will likely override both PC2 and proposed plan change 3.
9. With the exception of the technical changes to Table 14.2, Wellington Fish and Game Council is opposed to all changes proposed in PC2. Wellington Fish and Game Council considers that Horizons Regional Council is proposing further weakening of the One Plan despite clear judicial direction to the contrary. Specific reasons for Wellington Fish and Game Council's position are provided below.

Changes to Table 14.2

10. Wellington Fish and Game Council supports the changes to the LUC leaching limits in Table 14.2. These changes are based on the recent OVERSEER updates (version 6.3.1) and are:
 - a. Consistent with the existing allocation between land use capability classes.
 - b. Consistent with the existing reductions in Nitrogen loss (~30%) for water management zones.
 - c. Consistent with the variance between OVERSEER versions 5.2.6 and 6.3.1.

The discretionary activity consenting pathway

11. Wellington Fish and Game Council does not support the proposed discretionary activity consenting pathway, implemented through Policy 14.6(d) and Rule 14.2A, for intensive farming land use activities that cannot meet the new LUC limits in Table 14.2 described above.
12. Rule 14.2A introduces the new discretionary activity status for existing intensive farming activities that cannot comply with the new Table 14.2 LUC limits. This consenting pathway is based on the vaguely defined principle of "good management practices," additional innovations and measures, and the best practicable option.
13. The principle of "good management practices" is also reflected in the matters of control/discretion/non-notification in Rules 14-1 (the controlled activity) and 14-2 (the restricted discretionary activity). PC2 removes "compliance with the cumulative nitrogen leaching maximum specified in Table 14-2" as a matter of control/discretion. Instead, replacing it with the weaker assessment of "good management practices". Wellington Fish and Game Council does not support these amendments on the basis of the issues with "good management practice" as addressed below.
14. Wellington Fish and Game Council considers it essential that the matters of control/discretion for both Rule 14.1 and Rule 14.2 (sub-clauses (i) and (l) respectively) be amended to include reference to all objectives and policies in the One Plan, but in particular the water quality policies in Chapters 5 and 14. Currently, control/discretion is limited to specific policies in Chapter 14, and excludes those in the wider One Plan. The Chapter 5 regional policies provide clear direction as to how water quality should be managed and link to the Schedule E water quality targets. As such, it is important that decision-makers are able to take these matters into account when considering a resource consent application.

15. Amendment is also sought to correct a suspected omission in the wording of Rule 14.2. As currently worded the Rule excludes reference to sub-clause (j) of Rule 14.1. This is not consistent with the content of the Rule and was likely left out as an oversight.
16. In addition to the proposed changes to the Rules, PC2 amends the policy framework against which the Rules are assessed. Policy 14.6 previously contained only limited exceptions for activities that exceeded the LUC limits and those exceptions were only included because they applied to very limited areas of land and a small number of farms and required ongoing reductions in nitrogen leaching maximums to be demonstrated. PC2 proposes a much broader exception that potentially applies to much greater areas of land and a much greater number of farms. In addition, the exception proposed in PC2 basically reintroduces the concept of “reasonably practicable farm management practices” that was rejected by the Environment Court in the original One Plan hearing. That is because the starting point is use of “good management practices” and then additional innovations and measures if they represent the “best practicable option”. Wellington Fish and Game Council suggests that this simply constitutes a re-wording of “reasonably practicable farm management practices.”
17. The changes proposed in PC2 place substantial reliance on the concept of “good management practices” and the “best practicable option” in relation to additional innovations and measures to enable the consenting of intensive land use activities that will not comply with the LUC limits in Table 14.2.
18. “Good management practices” is defined within the One Plan as:

Good management practices refer to evolving practical measures and methods, including those established in industry-based standards, which are used at a sector or community level to minimise the effects of discharges to land and water
19. This definition is subjective, lacks certainty and is reliant on industry based self-regulation. Wellington Fish and Game Council considers that reliance on “good management practices” and the “best practicable option” in relation to additional innovations and measures will not necessarily lead to a reduction in nitrogen leaching and, therefore, oppose their inclusion as a default position for farmers who cannot meet the specified limits.
20. “Good management practices” themselves are the very minimum that all farmers should be undertaking right now as they are only the very basic subset of measures that can be used to reduce nutrient leaching. As such, the One Plan should make clear that “good management practices” should be implemented as a minimum measure, and should be assessed alongside all other relevant measures to reduce nutrient leaching. Wellington Fish and Game Council requests a number of amendments in the relief below to address this issue.
21. In the absence of a requirement to improve water quality or meet specified limits, “good management practices” and the “best practicable option” in relation to additional innovations and measures are not appropriate. Wellington Fish and Game Council considers that the exception listed in Policy 14.6(d)(i) should be deleted from the Plan. Consequentially Policy 5.8(a)(iia) and Policy 14.6(e) will also need to be deleted.
22. Wellington Fish and Game Council considers that intensive land use activities that cannot meet the LUC limits should be assessed as non-complying. In assessing a resource consent for such an activity, there should be a requirement to demonstrate how water quality will be enhanced (in line with Policy 5.4) through staged reductions in a “nutrient management

plan". To ensure transparency, resource consents granted under Rule 14.2A should also require public notification.

23. The definition of "nutrient management plan" which implement "good management practices" is also problematic. Not only is the Code of Practice for Nutrient Management referenced in the definition outdated (there is now a 2017 version) but the definition has also been amended to remove reference to OVERSEER as the specific model for assessing diffuse source pollution loss. In this regard, Wellington Fish and Game Council considers the pre-PC2 wording was more appropriate. The reference to OVERSEER should be reinstated, and the wording "of a recognised nutrient management model" removed. However, Wellington Fish and Game Council remains open to future amendments to include alternative models for horticulture if it transpires that this is not being well modelled using OVERSEER.
24. An additional sub clause (d) to policy 14-6 identifies two discretionary pathways for enabling intensive land uses that exceeded the limits in Table 1. The pathways are:
 - a. Where good management practices are implemented in accordance with a nutrient management; or
 - b. Intensive farming continues for no longer than five years at existing nutrient loss levels to enable the transition to an alternative non-intensive operation.
25. Sub clause (e) outlines how to operationalise this, with particular regard to be had to
 - a. the extent of exceedance of limits in Table 14.2
 - b. The rate of reduction of N loss towards Table 14.2 limits/targets
 - c. Whether further reductions are currently possible for the land based on existing technologies.
26. Of these tests, (c) is the most problematic, in that it refers only to "existing technologies". It appears to be ignorant of the large range of nutrient loss reductions that are available to intensive dairy systems in particular based on farm system modelling, optimisation and marginal cost-marginal benefit analysis. In its current form, the implementation of this test could easily be used to assume that the required nutrient loss reductions are uneconomic, without even assessing the possibility with the large range of tools that are available.
27. Clause (f)(iii) also appears to assume that the "nature, sequencing, measurability and enforceability" of the steps to transition out of the intensive farming activities would be provided by the applicant for the consent, rather than stipulated in the plan. Given that this clause sits below (f)(iii) which simply refers to good management practice and generic "avoid, remedy, mitigate" wording, it is not clear which one applies in decision-making.
28. The plan introduces a new Rule 14-2A as a discretionary activity to implement the above policy. It applies to dairy farming, commercial vegetable growing, cropping, and intensive sheep and beef grazing that are existing. It is not clear about where new activities fit.
29. The matters of control/discretion/non-notification in Rules 14-1 (the controlled activity) and 14-2 (the restricted discretionary activity) are amended to refer to good management

practices, rather than “compliance with the cumulative nitrogen leaching maximum specified in Table 14-2”. This represents a weakening of both rules in that for:

- a. The controlled activity rule – control over non-compliance with Table 14.2 has been lost and replaced with a vague definition of good management practice.
 - b. The restricted discretionary rule – discretion over non compliance with Table 14.2 has been removed and replaced with good management practice, the definition of which is too vague to provide an objective measure.
30. The new Rule 14-2A offers no criteria for notification and duration, however, the parent policy does indicated that transitional consents could be offered for 5 years, however, this is not reflected in the rule. There is also no guidance on notification. At a minimum, Fish and Game would expect a 10 year maximum consent duration under this rule with public notification to ensure transparency.

RELIEF

31. Wellington Fish and Game Council seeks the following specific amendments to PC2 or any such similar, other, further, and /or consequential relief to give effect to this submission.

Provision	Relief sought
Definitions	
Nutrient Management Plan	<ul style="list-style-type: none"> Reinsert reference to OVERSEER, update the definition to refer to the most recent Code of Practice for Nutrient Management (2017) and remove the additional wording proposed by PC2. Wellington Fish and Game Council has no issue with the deletion of the wording “both a Certificate of Completion in Sustainable Nutrient Management in New Zealand Agriculture and” from the definition.
Policies	
Policy 5.8	<ul style="list-style-type: none"> Deletion of sub-clause (a)(iia) and deletion of “(iia) and” from sub-clause (a)(ii). Insert “at a minimum” to the end of sub-clause (d)(i).
Policy 14.3	<ul style="list-style-type: none"> Reinstate the pre PC2 wording with the inclusion of the underlined words: “The Regional Council will examine on an on-going basis relevant industry based standards <u>including good management practices...</u>”.
Policy 14.6	<ul style="list-style-type: none"> Deletion of sub-clause (d)(i) and (e).

	<ul style="list-style-type: none"> • Insert “at a minimum” to the end of sub-clause (b). • If sub-clause (c) is retained, insert the additional words “farm system modelling, optimisation and marginal cost-marginal benefit analysis that determines the range of leaching reductions that are available” • Clarify the role of clause (f)(iii) in the hierarchy.
Rules	
Rule 14.1	<ul style="list-style-type: none"> • Revert sub-clause (b) in Matters of Control to pre-PC2 wording. • Amend sub-clause (i) in Matters of Control to read: “the matters in Objectives and Policies, particularly those in Chapter 5 and Chapter 14”.
Rule 14.2	<ul style="list-style-type: none"> • Amend Rule 14.2 to read: “Existing intensive farming land use activities not complying with any of the conditions, standards and terms (a), (b) and (d) to (j) of Rule 14.1”. • Amend sub-clause (b) in Matters of Discretion to pre-PC2 to read: “measures, including good management practices, ...” • Amend sub-clause (i) in Matters of Discretion to read: “the matters in Objectives and Policies, particularly those in Chapter 5 and Chapter 14”.
Rule 14.2A	<ul style="list-style-type: none"> • Amend intensive farming land use activities not complying with condition, standard, term (c) of Rule 14.1 to be non-complying. • Include a requirement for there to be public notification of the consent. • Incorporate the parent policy limit of 5 years on consent granted under this rule or if this has been incorrectly applied between the policy and the rule, a maximum time limit of 10 years.