

# Responding to the Overseer review

A guide for regional councils as they assess and respond to the Overseer Peer Review Science Advisory Panel's Review Report

## Introduction

This advisory note assists regional councils with assessing and responding to the Overseer Peer Review Science Advisory Panel's review report (the Review Report). Importantly, this note does not constitute government direction, and should be read in conjunction with the [Government's response report](#) (the Government's Response).

The advisory note is a starting point for councils to consider the implications of the Review Report, and to identify options that may help them formulate their response. Individual council's responses to the Review Report will depend on their regional context; Overseer has been used in council planning documents in various ways, and councils will need to decide how best to account for the Panel's findings. Some of this advice may not be relevant to every council, and this advisory note does not override each council's obligations to implement their statutory plans and resource consents in accordance with the law.

The Ministry for the Environment (the Ministry) will also continue to assist councils with their freshwater plans, consents, and compliance monitoring and enforcement (CME) requirements. As a result, this advisory note will be updated from time to time; please visit [Overseer Response](#) for the most up-to-date information.

# General principles

The Government's Response summarises the Review Panel's conclusions regarding Overseer, and we have not reproduced those conclusions here, other than to acknowledge the Review Report raises concerns that must be addressed.

The Government's Response acknowledges that councils need a range of tools to achieve freshwater outcomes, and the Government has committed to ensuring regional councils and resource users have access to reliable and practical tools to effectively manage nutrient discharges through the planning and consenting framework. The aim is to have fit-for-purpose tools available for use within 12 months.

In the meantime, at the broadest level, the Ministry recognises that councils must continue to implement their plans, administer existing consents, and process new consent applications in a manner that promotes the objectives and policies of their respective plans and the National Environmental Standard for Freshwater (NES-F), despite the issues raised in the Review Report. We suggest that councils are alert to the Panel's concerns about Overseer and where possible within their existing policy and consenting frameworks, adopt a best information approach and look for opportunities to support decisions made using Overseer data with multiple lines of evidence. Furthermore, issuing new consents and preparing new plans or changing existing plans to allow for the future use of new or redeveloped tools will provide for maximum future flexibility when those tools become available.

## Operative regional plans that use Overseer

Regional councils are legally obliged to continue to implement their plans, administer existing consents and process new consents in a manner that promotes the objectives and policies of their plans. The Review Report does not change this. Where operative plans use Overseer, considering other information in addition to Overseer, where possible, may give increased confidence in councils' nutrient-management decisions. More information about implementing operative plans is provided in the [Consents](#) and [Compliance monitoring and enforcement](#) sections.

## Proposed plans and plan reviews in process

The Ministry recognises that councils have plans at varying stages of development; the effect of the Review Report on these plans will therefore vary depending on the extent to which a plan uses Overseer as a nutrient management tool.

### Current plan hearings and appeals

Councils can continue with existing plan processes but are encouraged to take account of the findings in the Review Report where there are opportunities to do so in the planning process. Where possible, councils may wish to consider opportunities through the RMA Schedule 1 process to complement the use of Overseer as a nutrient management tool. As highlighted in the

Government's Response, this will be particularly important where landscape factors and other evidence suggest nitrate-nitrogen is not the dominant species of nitrogen loss at the farm or catchment scale.

Importantly, any alternative approaches to Overseer-based limits on resource use will need to give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM). Plan changes that give effect to the NPS-FM must be notified by 31 December 2024 (section 80A of the Resource Management Act 1991 [RMA]).

## **Plan development**

A key impact for regional councils will be the ability to set nutrient concentrations and exceedance criteria (NPS-FM clause 3.12) and translate these into limits on resource use (including property-scale controls). Refer to the Ministry's recent guidance for [setting instream nutrient concentrations](#).

Overseer can still be used to develop catchment loads or limits (subject to the qualifications set out in section 4.2.1 of the Government's Response), so preparations for publicly notifying new freshwater planning instruments to achieve target attribute states can continue.

# **Using the Overseer model in resource consent processing**

Overseer has been used to different degrees and in different contexts by regional councils around the country. Some councils have Overseer embedded within their planning and consenting framework, and others use it as a non-regulatory method to encourage good farm management practices. The Government's Response has outlined some general principles (section 4.1.1) for implementing existing consents and for consent processing. More detailed advice follows, although we recognise that the generic nature of the advice may not be relevant to all councils, and we remain committed to working with those that are most affected.

## **Requirements for applications**

Where regional plans require resource consent for an activity, an application for resource consent must be made to the relevant consent authority and councils must process those applications subject to the RMA. Section 88 and Schedule 4 of the RMA state what information must be included in an application and supporting Assessment of Environmental Effects (AEE), including the provision of sufficient detail for processing.

Overseer outputs provided with resource consent applications are a common method used by applicants to develop supporting evidence in relation to nitrate-nitrogen losses below the root zone, and, to a lesser extent, phosphorus loss. In some cases, plan rules require Overseer assessments to be undertaken as part of a consent process. As part of any such application councils will need to be mindful of the uncertainty of such estimates, particularly where nitrate-nitrogen is not likely to be the dominant species of nitrogen loss at the farm or catchment scale. Where the relevant regional plan requirements allow it, councils are encouraged to seek additional evidence to support any conclusions reached.

While each regional council will have its own information requirements for resource consent applications to be considered as complete and sufficient for processing, councils may wish to consider whether the following information would be necessary and appropriate to support its decision-making:

- detailed descriptions of the existing land use and the proposed activities
- detailed descriptions of the receiving environment and its current state (both localised and catchment-scale), including all components of the local freshwater system and how they are connected and identifying nearby water users and sensitive receptors (for example wells, springs, wetlands, streams, lagoons, lakes)
- a monitoring plan for farm activities and for the receiving environment, including actions or responses proposed, should deterioration in the environment occur
- a full assessment of the range of relevant contaminants, determined by the proposed activity and the receiving environment.

The responsibility for providing information on the actual and potential effects of an activity lies with the consent applicant, not regional councils. Resource consent applicants may enlist technical experts to undertake the necessary assessments based on the body of research available and provide those assessments with their applications.

## **Assessing resource consent applications**

It is a legal requirement that regional councils continue to process resource consent applications in a manner that promotes the objectives and policies of their plans, irrespective of the matters raised by the Review Report. Where a plan requires that Overseer be used, this remains a legal requirement that applicants and consent holders must comply with.

Much of the discussion below relates to information and assessments required to give confidence to assessment of effects, where Overseer, in its current form, is not sufficient to provide that confidence. This is important, as decisions on notification, affected parties and ultimately the application may now require additional and different information.

### **Where regional plans provide an input-based regime, or an alternative model is available**

There will be minimal impacts on processing resource consent applications where the relevant regional plan is focused on input-based controls and practices, rather than property-scale Overseer limits. The processing of such resource consents and substantive decision-making under input-based regimes can continue.

Some regional plans allow the use of alternative models to Overseer. Such alternatives can be considered by regional councils, and if appropriate and fit for purpose, may be substituted. This may mean reduced costs for resource consent applicants and the regional council if a simpler or alternative approach is sufficient. The processing of resource consents and substantive decision-making where alternative models are available can continue.

When assessing and deciding on resource consents, councils must consider the effects of an activity on the environment. It is important that if alternative models are used, progress toward achieving water-quality outcomes is maintained.

## **Assessment of the effects on the environment**

If a regional plan requires the use of Overseer to determine property-scale limits, and limits are then used to quantify effects for the purposes of notification or substantive decision-making, regional councils may be able to utilise a wider range of information and non-model-dependant matters to determine actual and potential effects. Such information may include the input data and information typically used for Overseer assessments or other farm management practices known to influence nitrogen loss.

Modelled estimates of nutrient outputs rely on detailed and robust farm system input data and a sound understanding of how changes in farm management practices might influence nutrient outputs. Irrespective of whether the on-farm actions or practices have been informed by Overseer or expert opinion, on-farm good management practices are supported by a robust body of independently peer-reviewed knowledge and this body of knowledge will continue to be useful in assessing the actual and potential effects of an activity.

Generally, Overseer has assumed that the inputs have been implemented on-farm in accordance with industry agreed good management practices. Regardless of loss numbers generated using Overseer, the ongoing implementation of these agreed good management practices, where they are not currently happening, will offer some opportunity to reduce contaminant loss risk.

Input-based controls proposed by applicants may also provide an opportunity to reduce adverse effects. Input controls can range from very simple to sophisticated. A 'simple' input control may be a maximum stocking rate or N fertiliser application rate as currently included within the National Environmental Standard for Freshwater (NES-F). More sophisticated input controls might give, for example, the choice between complying with a maximum level of supplementary feed per cow or complying with a requirement to winter all dairy cows off farm.

## **Considering cultural values when processing farming land use and discharge permits**

Councils can continue to engage with tangata whenua when processing resource consent applications for farming land use and discharge permits as set out in their regional plans.

## **Relevant matters of control or discretion**

Councils will need to closely consider controlled and restricted discretionary activities to determine whether additional information is requested and ultimately if conditions requiring input-based controls or other restrictions can and need to be imposed.

## **Request for further information and processing timeframes**

Sufficient information and assessments of the actual and potential effects on the environment should be provided as part of an application for resource consent. However, requesting further information in accordance with section 92 of the RMA may be required. If additional information is required in response to the new understanding of the Overseer model, and information has already been requested under Section 92 of the RMA, timeframes may potentially be extended using section 37 of the RMA.

## Resource consents under the NES-F

The NES-F contains regulations that apply to a range of activities that pose risks to freshwater and freshwater ecosystems. Much of the NES-F controls on intensification are temporary, in that many of the requirements no longer apply after regional plans are publicly notified to give effect to the NPS-FM (by 31 December 2024 at the latest).

The regulations apply to activities including land use intensification and the associated discharges of contaminants into or onto land including in circumstances that may result in the contaminant entering water (both surface and groundwater). The sections below provide further information about how councils may approach resource consent applications made under the NES-F.

### Agricultural intensification

Temporary standards that relate to agricultural intensification are set out in Part 2, subpart 2 of the NES-F. Regulation 24 of the NES-F sets out the conditions of granting resource consents for agricultural intensification activities that are classified as discretionary activities. A resource consent for a discretionary activity under subpart 2 of the NES-F may only be granted if the consent authority is satisfied that granting the consent will not result in an increase in:

- a) contaminant loads in the catchment, compared with loads as at the close of 2 September 2020; or
- b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.

Some regional councils and resource consent applicants may have expected Overseer modelling to be the primary method that applicants used to develop supporting evidence to provide with resource consent applications under these regulations. Given the findings in the Review Report, the use of Overseer modelling alone for this purpose is unlikely to provide sufficient certainty that the requirements of Regulation 24 are satisfied, particularly regarding non-nitrate-nitrogen species.

In the immediate term, applicants are encouraged to continue to supply Overseer-modelled assessments as part of their application. Regional councils need to be mindful of the uncertainty around such estimates and should consider other evidence also to support any decisions.

Depending on the situation, applicants may need to provide assessments showing how all potential sources of relevant contaminants will be managed to ensure the risk of contaminant loss to water will not increase beyond that arising from the existing activity. Risks for contaminant losses include:

- slope
- soil type
- depth of groundwater
- presence of surface water bodies, setbacks and riparian management
- changes in vegetation cover
- irrigation
- stocking rate
- forage type
- fertiliser application rates and timing

- stock management and wintering practices
- use of imported feed
- effluent management
- cropping and cultivation.

The responsibility for demonstrating whether the activity can meet the conditions of Regulation 24 of the NES-F lies with the consent applicant. There is a considerable body of scientific literature that can inform the likelihood and associated effects of contaminant losses through land use intensification, which can be used by resource consent applicants (or technical experts engaged by the applicant) in preparing and submitting any applications for agricultural intensification under the NES-F.

## Synthetic nitrogen fertiliser cap

Part 2, subpart 4 of the NES-F (which came into effect on 1 July 2021) regulates the application of synthetic nitrogen fertiliser to pastoral land. Regulation 33 of the NES-F limits the amount of synthetic nitrogen fertiliser that can be applied as a permitted activity to 190 kilograms of nitrogen per hectare per year (kg N/ha/yr), referred to as the 'N Cap'. If an applicant seeks to apply more synthetic nitrogen fertiliser than the N cap, resource consent is required as a non-complying activity in accordance with Regulation 34(2) of the NES-F.

Regulation 34(2) of the NES-F states that a resource consent may be granted for the non-complying activity only if (in addition to section 104D of the RMA being satisfied):

- a) the applicant provides the consent authority with a report by a suitably qualified and experienced practitioner that—
  - i. sets out good practices for applying synthetic nitrogen fertiliser to the land in pastoral land use in each relevant contiguous landholding; and
  - ii. states that granting the consent would not result in the rate at which nitrogen may enter water exceeding the baseline rate<sup>1</sup> for each contiguous landholding; and
- b) the consent authority is satisfied as to the matters in the practitioner's report.

While the information requirements for resource consent under Regulation 34 of the NES-F may differ between regional councils, councils would generally expect an Overseer report and nutrient budget to be used in support of an application to demonstrate that the estimated baseline nitrogen leaching rate is not being exceeded despite the use of fertiliser above the nitrogen cap. The Review Report's findings mean that reliance solely on Overseer, at least in its current form, may be insufficient to satisfy a council that this test is met, and applicants may need to use alternative sources of evidence to corroborate any Overseer modelling (particularly with respect to the non-nitrate species of nitrogen).

Regulation 34(6) of the NES-F provides an alternative pathway to the requirements of Regulation 34(2). Resource consent may be granted as a non-complying activity (subject to section 104D of the RMA) if the consent authority is satisfied that the applicant has provided a *synthetic nitrogen reduction plan*. The consent authority will also need to be satisfied that at least one of the gateway tests in s104D is satisfied.

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<sup>1</sup> Baseline rate is defined in Regulation 34(5) of the NES-F

The *synthetic nitrogen reduction plan* must demonstrate how the applicant will reduce their use of synthetic nitrogen fertiliser (year by year) so that their application of synthetic nitrogen does not exceed the nitrogen cap on or after 1 July 2023.

Councils must determine whether the matters requiring consideration in s104 and the jurisdictional threshold in s104D of the RMA can be met for consent applications to exceed the N Cap. This requires the council to make a case-by-case assessment of the application considering the matters set out in section 104 and 104D of the RMA. The Review Report's findings on Overseer may make it more challenging for an applicant to provide sufficient certainty to the council to meet these statutory tests.

## **Resource consent conditions**

Section 108 of the RMA enables the consent authority to include conditions on a resource consent. Conditions typically define the scope of the consent and specify limits or actions to avoid, remedy or mitigate the effects of the activity that are authorised by the resource consent.

### **Conditions that are input-based**

If Overseer has been used to assess input-based conditions, councils are encouraged to use a range of other evidence to support the findings. The provision of on-farm information also remains important for future decision-making, both on-farm and catchment-wide.

### **Conditions that include property-scale Overseer limits**

Where plan rules mandate conditions that include property-scale Overseer limits, regional councils are encouraged to consider (where possible within the planning framework) a hybrid approach that includes a requirement to report on input-based controls and other non-model-dependant matters that are provided in application documents, in addition to property-scale Overseer limits.

Some activity classification frameworks within regional plans may constrain the types of conditions that regional councils are able to include on resource consents (such as controlled or restricted discretionary activities). Such situations will need to be carefully considered as conditions beyond matters of control or restricted discretion may not lawfully be included.

## **Resource consent durations**

Section 123 of the RMA details the possible durations for resource consents. Councils may wish to consider granting resource consents that, as a consequence of plan requirements, include reference only to property-scale Overseer limits for shorter durations (for example, to have durations no longer than 31 December 2024 by which time a regional plan, to give effect to the NPS-FW, will be notified). A longer timeframe could be considered if flexibility is built into the conditions to adopt either new management approaches or revised versions of the Overseer model (or like tool), when they become available.



# Overseer and compliance monitoring and enforcement

Existing resource consents and permitted activity rules remain valid authorisations of resource use. Councils can continue to monitor these authorisations to establish the level of compliance that is occurring with the relevant national and regional policy, and their plans.

## Prioritising high-risk activities

Most councils already prioritise their compliance monitoring and enforcement (CME) work to those activities that pose the greatest risk to national and regional policy objectives. Councils may wish to check that their monitoring system appropriately prioritises compliance monitoring of resource consents that relate to nutrient loss, where they are considered at greater risk of non-compliance and are associated with higher potential for adverse environmental effects. Higher risk consents may include resource consents that:

- include a nutrient leaching limit, where an Overseer assessment is required for compliance
- require reductions in permissible nitrogen leaching
- manage multiple properties or complex farming systems (such as irrigation schemes).

For these types of consents, councils may wish to consider increased monitoring and working directly with consent holders to maximise opportunities for compliance, and ensure they are well informed of the Review Report's findings on the Overseer model.

Should it become apparent that changes are required to the resource consent to ensure potential adverse effects are appropriately avoided, remedied or mitigated, the council may wish to consider reviewing the consent under section 128 of the RMA. It is possible that in some situations, a consent holder may apply to change consent conditions under section 127 of the RMA (other than in relation to consent duration). Councils should continue to exercise their usual decision-making when considering these options.

## Managing the risks of increasing nitrogen discharges

There is a risk that some resource users may perceive the Review Report as an opportunity to increase farming intensity before new or improved tools are available. It is important that land use is not able to intensify because of the Review Report findings, in order to maintain the direction of travel for delivering on the Essential Freshwater programme.

The intensification controls within the NES-F will help to mitigate the risks of land-use change and excessive fertiliser use. When councils are setting conditions for new resource consents, using targeted input-based or practice-based controls (where this is possible under the operative plan), as well as any required use of Overseer, may also provide some protection against this risk.

Councils are encouraged to think broadly about regulatory requirements in their existing plans and resource consents that may help mitigate the risk of uncontrolled intensification, and to consider whether there are steps beyond existing CME activities that could further mitigate this risk.

The Government will monitor this intensification risk closely and may consider amending national instruments if uncontrolled intensification becomes apparent.

# The next 12 months

Further details of the Government's programme for the next 12 months can be found on the [Overseer Response](#) page.

The Ministry is committed to supporting councils as they manage the implications of the Review Report. This support may be collective or individual to each council, depending on their specific needs, and the Ministry will continue to work with councils to determine what support is most useful and appropriate. Please [email us](#) if you require further support.



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