

Issues and Options

A Review of the Canterbury Regional Policy Statement Chapter 7 Soils and Land Use

Purpose

The purpose of this paper, which is part of a review of the Canterbury Regional Policy Statement (CRPS) is to discuss issues and options for Soils and Land Use (Chapter 7). The paper brings together the current thinking on the review of the chapter from the recent review of its provisions (“Our Changing Environment: An Evaluation of the 1998 Canterbury Regional Policy Statement”). It outlines options and develops a preliminary approach. Views are sought on the possible policy approaches prior to undertaking more detailed analysis and drafting of specific wording.

Background

The review of the CRPS must decide whether to retain, amend or delete existing provisions and/or to add new provisions.

Changes to the Resource Management Act 1991 (RMA) since it was made operative in 1998 will effect these decisions. Specific to soil, these included a new definition for soil conservation in 2003 and a new regional council function of “the investigation of land for the purposes of identifying and monitoring contaminated land” in 2005. Appendix 1 contains the statutory context under the RMA and the Soil Conservation and Rivers Control Act 1941.

Chapter 7 Soils and Landuse of the CRPS acknowledges that soil is a natural resource of importance to the region. Safeguarding the life-supporting capacity of soil is an important aspect of sustainable management. Dealing with the effects of the use of land on soil is a matter of regional significance in Canterbury. There are powers for regional councils under the RMA to control land use, and to control the planting of vegetation in river and lake beds, for soil conservation purposes.

Variation 1 to the Proposed Natural Resources Regional plan (NRRP) contains chapter 8 dealing with soil conservation. The chapter contains three objectives and nine policies. The methods for implementing the policies are non-regulatory methods and presently do not include regional rules. These non-regulatory methods involve information and promotion, investigations, economic instruments, an environment enhancement fund and actions by territorial authorities. It is stated that soil monitoring may result in the reconsideration of the need for regional rules.

The methods in CRPS Chapter 7 include “Investigations”. This method describes the data that is to be collected to assess trends in soil quantities and qualities. In order to convey the concept of ongoing review of the data, the method would be better entitled “Investigations and Monitoring”

The present approach to soil conservation is not wholly non-regulatory. There are regional rules in the Environment Canterbury Land and Vegetation Regional Management Plan governing burning of vegetation in the hill and high country. Part I covers Earthworks and Vegetation Clearance for Kaikoura East Coast, Part II is the same but for Port Hill and Part IV Land Management Fires, Canterbury Hill and High Country. The Nelson-Marlborough Transitional Regional Plan also has effect for the Kaikoura area. It has different provision from those in the Canterbury Regional Council Transitional Regional Plan.

There are also some Bylaws under the Soil Conservation and Rivers Control Act 1941 carried forward into the Transitional Regional Plan that control ground cover on steep slopes and vegetation on riparian margins.

The Soil Conservation and Rivers Control Act gives regional councils powers to undertake works to prevent or lessen erosion and to promote soil conservation. Land improvement agreements and Bylaws dealing with ground cover on steep slopes and riparian margins are in place under this Act. Advice is given to landowners and resource care projects for small catchments are undertaken. A poplar nursery sells these plants for erosion control.

Current CRPS provisions and their effectiveness

Chapter 7 of the CRPS deals with four issues: land degradation as a result of land use, loss of versatile soils, soil contamination and land use effects on water quantity and quality.

Policies under the issue of land degradation seek to prevent land uses from eroding soils or depleting soil quality. There are also policies to maintain or restore vegetation cover where its loss can increase the risk of soil erosion, and to deal with pests that deplete such vegetation. The CRPS policies for land degradation form the basis for Chapter 8 of the proposed NRRP. To this extent they are effective, although the NRRP is yet to be made operative. Long term monitoring of soil quantity and quality is needed to reach a final conclusion on this matter.

The Policy under the versatile soils issue seeks to limit development to protect such soils. It has been variously criticised by the Courts: *Canterbury Regional Council v Waimakariri District Council and Pegasus Bay Coastal Estates (Pegasus Bay)* [fn21 [2002] NZRMA 208], *Suburban Estates Limited and Muir Park Corporate and 21 others v Christchurch City Council* [fn22 C217/2001] and *J G and H Shaw, Halswater Holdings Limited and Apple Fields Limited v Selwyn District Council* [fn23 C67/2004].

The policy and the associated method of influencing district plan provisions have been found to be ineffective in limiting such development for the purpose of protecting versatile soils. The Courts found that the RPS policy was not restrictive in controlling development and acted only as a general guide.

A major part of the issue of loss of versatile soils is one of settlement and other developments and subdivisions affecting availability of productive land. Once land is subdivided there is often an implicit or explicit right to build on the property in a way that precludes future use of the soil. Settlement policies in Chapter 12 and the proposed new 12A (UDS) may be a better way of dealing with this aspect of versatile soils than inclusion of policies and methods in this chapter.

Policies under the issue of soil contamination seek to control land uses with the potential to contaminate soil and to assess risk levels for land already contaminated. Such land uses involve use of hazardous substances. This includes the application of fertilisers and sprays containing hazardous substances and the storage and use of hazardous materials.

The soil chapter by itself has not been effective in dealing with the issues of discharges and ongoing management of contaminated land. (The term “contaminated land” rather than “contaminated sites” as used in this chapter is now preferred.) The issues are largely dealt with in other CRPS chapters involving water, contaminated land and hazardous substances.

The fourth issue of land use effects on water quality and quantity has no objectives, policies or methods and simply refers to the water chapter. Chapter 8 has no effect at all on this issue.

Policy options and discussion

Soil and its degradation and erosion is a significant resource management issue for Canterbury that should be addressed in the CRPS. There needs to be policies in the CRPS addressing this issue.

Options are to retain the policies in the part of the chapter dealing with soil degradation and erosion or to modify them. The fact that the chapter has been effectively implemented through the proposed NRRP is a good reason for keeping any modifications at a minor level.

It is clear that the policy relating to the issue of the loss of versatile soils has been ineffective. Options are to either retain this part of the chapter, to replace the policy with a more effective one, or to delete this part and leave the issue to be dealt with under Chapter 12 and the proposed variation to the CRPS implementing the Urban Development Strategy for the area around Christchurch.

The versatility of soil is clearly a factor in soil quality along with other attributes. It is not something that could be comfortably ignored in a CRPS chapter dealing with soils. A policy that recognises the versatility of soil as valuable attribute of some soils and seeks to retain such an attribute may be appropriate. The implementation of such a policy would be through the non-regulatory methods in this chapter and the provisions in Chapter 12 Settlement and Chapter 12A UDS. The choice is one of either incorporating the issue of the loss of versatile soils under Issue 1 or keeping it separate as an important matter in its own right.

Issue 3, soil contamination with hazardous substances and ongoing effects, is still a matter of concern in Canterbury. There is no question that some land uses can contaminate soil without necessarily being classified as a discharge onto or into land that needs to be authorised by a rule or a resource consent. This leads to the conclusion that at least some references to the issue may be necessary in this chapter. However, the use of hazardous substances, contaminated land and discharges to soil affecting water can be effectively dealt with elsewhere in the CRPS.

Retaining the section of the chapter as is, is not an appropriate option. Incorporating the issue of soil contamination as one affecting soil quality and dealing with it by modifying the policies and methods under issue 1 would not sit well or integrate with Chapter 17 Hazardous substances. The only realistic option is to replace it with a reference to the management of hazardous substances and contaminated land under Chapter 17 hazardous substances and Chapter 9 which deals with discharges to land affecting water quality, or to delete this part of the chapter altogether.

It is noted that there is an obligation in the RMA to state the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land:

- to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
- to maintain indigenous biological diversity.

This would include the use of land resulting in contamination of soil by hazardous substances that might affect soil ecology, for example effects from fertiliser residues. Regardless of this chapter, this is addressed in the review of Chapter 17 Hazardous Substances. Soil ecology adversely affected by hazardous substances might also need to be considered in reviewing Chapter 8 Landscape, Ecology, and Heritage.

The fourth issue in the chapter has no associated objectives, policies or methods. It is a fact that land use can affect water quality and quantity. It appears to have been included for completeness only, it has no effect. Options are to retain it in its ineffective form, replace it with a reference to Chapter 9, or to delete it. A related option is to consider in a re-title of the chapter to read “Chapter 7 Soils” and not “Chapter 7 Soils and land use”. This would be appropriate if this last land use issue, the issue relating to versatile soils and the issue relating to soil (land) contamination were to be deleted or dealt with by other chapters.

Recommendations

The following substantive changes are recommended. There will also obviously need to be consequential changes throughout the chapter.

- Retain Issue 1 and its associated objectives, policies and methods, with minor updating and amendments, but include soil contamination.
- In the part of the chapter dealing with Issue 2 (versatile soils) replace the policy with one that recognises the versatility of soil as valuable attribute of some soils (Class 1 and 2) and seeks to retain such an attribute. The implementation of such a policy would be through the non-regulatory methods in this chapter and the provisions in Chapter 12 Settlement and Chapter 12A UDS.
- Replace Issue 3 soil contamination and its objective, policies and methods with appropriate references to Chapter 17 Hazardous Substances in the introduction to the chapter and include soil contamination as part of issue 1, recognising it as a factor in reducing soil quality.
- Replace Issue 4 with an appropriate reference to Chapter 9 Water in the introduction to the chapter.
- Re-title the chapter as “7 Soils”
- Re-title Method (c) Investigations as “Investigations and Monitoring”.

Appendix 1 Statutory Context

Resource Management Act 1991

Section 2 - Interpretation

Soil conservation means avoiding, remedying, or mitigating soil erosion and maintaining the physical, chemical, and biological qualities of soil

Section 5 - Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, **soil**, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 30 Functions of regional councils

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
 - (b) The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
 - (c) the control of the use of land for the purpose of –
 - (i) **soil conservation:...**
 - (d) the investigation of funds for the purposes of identifying and monitoring contaminated land:...
 - (g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of –
 - (i) **soil conservation:**

Section 62 Contents of regional policy statements

- (1) A regional policy statement must state—
...
 - (i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—
 - (i) to avoid or mitigate natural hazards or any group of hazards; and
 - (ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - iii) to maintain indigenous biological diversity.

Soil Conservation and Rivers Control Act 1941

10 Objects of Act

The objects of this Act are –

- (a) The promotion of **soil conservation**;
- (b) The prevention and mitigation of **soil erosion**;
- (c) The prevention of damage by floods;
- (d) The utilisation of lands in such a manner as will tend towards the attainment of the said objects.

126 General powers of Catchment Boards

- (1) It shall be a function of every Catchment Board to minimise and prevent damage within its district by floods and **erosion**.
- (2) Each Board shall have all such powers, rights, and privileges as may reasonably be necessary to expedient to enable it to carry out its functions, and in particular each Board shall have power to construct, reconstruct, alter, repair, and maintain all such works and do and execute all such other acts and deeds including the breaching of any stopbank as may in the opinion of the Board be necessary or expedient for –
 - (a) Preventing or lessening erosion or the likelihood of **erosion**
 - (b) Promoting **soil conservation**

Appendix 2 – Review of Resource Management Issues – Chapter 7 Soils and Land Use

Issue	Relevance	Significance	Recommendation
1. Existing and potential land degradation, particularly degradation in the quality of life-supporting capacity of soils which arise from land use practices or activities that reduce their: versatility for a wide range of primary productive uses, productivity ; and ability to support a robust or regenerating vegetation cover.	Soil erosion and degradation is still a relevant regional issue that should be addressed.	Soil erosion and degradation is significant in Canterbury.	Retain with only minor modifications
2. Land use activities which reduce the availability of land which can be identified as comparing versatile soils, thereby foreclosing future land use options that benefit from being located on such soils.	This is a big issue in or near to Christchurch and also still significant as an issue in other areas through small lot subdivision.	Significant, but dealt with elsewhere in the CRPS (Chapter 12 Settlement and Chapter 12A UDS).	Amend to recognise the versatility of soil as valuable attribute of some soils (Class 1 and 2) and seek to retain such an attribute and allow implementation through the non-regulatory methods in the chapter and the provisions in Chapter 12 Settlement and Chapter 12A UDS..
3. Land use activities which result in soil contamination and consequent adverse environmental effects	This is still an issue in relation to soil contamination through fertiliser and spray use and storage of hazardous substances.	Significant, but partly dealt with elsewhere in the CRPS	Retain soil contamination part under Issue 1 and deal with contaminated sites and discharges to land under other chapters of the CRPS.
4. Land use either on water quantity and quality in catchments.	This is still a relevant land use issue.	Significant, but dealt with elsewhere in the CRPS.	Delete and rename the charges as "Soils".

Appendix 3 Summary of the Analysis of Policy approaches Chapter 2 Soils and Land Use

Option 1 - Retain Issue 1 largely in its present form

	For	Against
Purpose of the RMA	Clearly a resource that needs to be sustainably managed	-
Integrated Management	Integrated further under the RMA and the Soil Conservation and Rivers Control Act	-
Carrying out Functions	Relevant in terms of dealing with effects of regional significance	
Consultation Views		
Overview	Retention of this part of the chapter effectively deals with the issue (through non-regulatory means in the proposed NRRP)	

Option 2 –Replace the policy with one that recognises the versatility of soil and seeks to retain those qualities. Refer to implementation through Chapters 12 and 12A as well as through this chapter.

	For	Against
Purpose of the RMA	Courts have rejected current approach	
Issue resolution	Present policies are ineffective	Danger that the issue will be lost and policies watered down.
Integrated Management	Better integration with settlement policies and the policies under Issue 1	Possible lack of integration with Issue 1
Carrying out functions	More of a district than a regional role and the specifications of district roles is better achieved in the Settlement and UDS chapters.	
Consultation views		
Overview	Management of versatile soils is better achieved by a combination of this chapter and the Settlement and UDS chapters.	

Option 3 – Replace Issue 3 soil contamination with appropriate additions to issue 1 and its policies, recognising it as a factor in reducing soil quality but leaving use and storage of hazardous substances to be dealt with by Chapter 17.

	For	Against
Purpose of the RMA	Soil is a resource that should be sustainably managed.	
Issue Resolution	The chapter largely deals with rural issues and soil contamination can be urban as well with soil productivity being less of an issue. Agricultural and uses (fertilisers, sprays) that contaminate soils are still dealt with in this chapter.	
Integrated Management	Better integration with other parts of the chapter. Specific provisions for all hazardous substances are in Chapter 17	
Carrying out functions	Still enables functions under the RMA to be dealt with	Less likelihood of regional rules being made to deal with soil contamination where there are no consequential water impacts.
Consultation views		
Overview	Retain only part of this issue/policy	

Option 4 – Delete Issue 3 Effects on water quality and quantity, and replace it with a reference in the introduction . Re-title the chapter as “7 Soils”.

	For	Against
Purpose of the RMA	Little point in including it as a substantive issue that is not resolved in the chapter	
Issue Resolution	Not resolved in the chapter anyway	
Integrated management	Has no policies etc anyway	Possible removal of an integrating link.
Carrying out functions	Not a soil function in this chapter	
Consultation views		
Overview	Delete	