

Report to the Collaborative Stakeholder Group November 2015 – For information

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To: Collaborative Stakeholder Group
From: Bill Wasley, Independent Chair
Subject: Implementation considerations for policy design
Section: For information – for CSG workshop 19 discussion

Disclaimer

This report has been prepared by Waikato Regional Council implementation staff for the use of Collaborative Stakeholder Group Healthy Rivers: Wai Ora Project as a reference document and as such does not constitute Council's policy.

1 Purpose

The purpose of this report is to provide the Collaborative Stakeholder Group (CSG) with some implementation considerations for use in discussions on catchment wide rules and Tailored Property Plans (TPP) as policy options.

Recommendation:

That the report "Implementation considerations for policy design" (Doc #3608886 dated 11 Nov 2015) be received for information.

2 Introduction

The following report is intended to assist the CSG in its consideration of policy design options relevant to the use of property plans in the regulatory context. Implementation staff propose to speak to the report at the workshop of the 23rd/24th November. The report begins with some general points for consideration in policy design, and includes more specific commentary in table 1 on possible catchment wide rules that were considered by CSG at its workshop on 13 October.

At that workshop the CSG was presented with three policy approaches in the report Policy options – CSG decisions needed to meet proposed amended timeline (Doc#3572653, dated 6 October 2015) including property level limits, catchment wide rules, and tailored property plans. This report offers some implementation considerations relating to the implementation of catchment wide rules and tailored property plans. Implementation of policies relating to property level limits is not discussed.

3 Catchment wide rules

As the CSG has already been thinking about in their considering of catchment wide rules there are a few overarching points to keep in mind. The list below is just a reminder of some of these things and can be expanded on from an implementer's perspective at the next CSG workshop.

Good regulation – rules need to be:

- Consistent with the relevant policy direction.
- Sufficiently clear so everyone affected by them knows where they stand.
- Reasonable – to ensure effective buy-in / acceptance by those affected by them.

If rules satisfy the above criteria, it should be easier for landowners to know what they need to do to comply, and straightforward for the Council to enforce.

Method of regulation (activity status)

- Part of a “permitted activity” or consent regime? Pros and cons of each – what best achieves the changes in behaviour sought?

Scale/scope

- How many people will be affected by the policy? This will be influenced by the extent to which the policy is targeted or prioritised or rolled out over time. a

Achievability

- Are the required practices easily understood and implemented?
- Will they fit within existing systems or are new approaches required?
- Can we expect willing compliance?

All of the above will be critical to determine the scale of resourcing required for implementation, and hence the time and costs associated with implementation.

Policy document 3494533/v5 suggested a range of possible catchment-wide rules for the CSG's consideration. Specific comments on implementation of these rules is provided in Table 1 on page 7 of this report.

4 Regulation based on development of, and compliance with, tailored property plans

4.1 Policy approach

The tailored property plan (TPP) approach proposes requiring all properties (e.g. over 4ha) to comply with a farm plan that is tailored to the specific needs of the property. The Policy options report “Policy options – CSG decisions needed to meet proposed amended timeline” (Doc#3572653, dated 6 October 2015) suggested that the policy may provide for;

- WRC consented property plans, or
- Industry-supported or industry assurance scheme property plans

This policy approach is discussed in more detail in the report Options for Tailored Property Plans (Doc #3563987 dated 9 October 2015). That report considers two routes by which landowners may develop their TPP, irrespective of whether it is for a consent or an industry assurance scheme.

Option 1: Industry¹ bodies scheme with Tailored Property Plan
Option 2: Industry scheme with Tailored Property Plan

For either option:

1. It is compulsory for landholders to have a Tailored Property Plan
2. Property Plans must be certified by an accredited provider. Certification confirms that the information is correct and actions in the plan are appropriate
3. Training and competencies are critical – through an accreditation process of auditors and plan providers.
4. It is used in conjunction with catchment-wide rules
5. Landholders are either in an industry scheme of appropriate rigour that includes industry auditing to be a permitted activity, or they need a resource consent.

It is envisaged that the policies would identify practices that the TPP would have to address and examples have been provided in the earlier reports to CSG for consideration.

4.2 Implementation considerations

4.2.1 Consent or industry assurance scheme

From an implementation point of view, Property Plan could either be attached to a “consented” or “permitted” regime. Effectively, a permitted activity rule with conditions creates a similar legal obligation on a landowner to that of a resource consent. Options available under the RMA for the purpose of achieving compliance are the same for either option.

If the decision is to require consent for all properties over 4ha, this would require considerable resources to implement, which would come at a cost to the Region. There may, however, be benefits of going through a consenting process such as a greater degree of clarity around expectations and obligations under the consent.

Considerations that are likely to influence the resourcing needs for the implementation of a regulatory regime around property plans include the numbers involved, the likely complexity of the plans and any timeframes that may be specified in the policy.

- With respect to the issue of timeframes, the CSG is already considering how to spatially prioritise actions, e.g. Limiting numbers by targeting “hot spots” within the catchment, high risk land uses and land type combinations, or increasing the minimum property size.
- Limiting complexity by using policies to define the activities, practices and risk factors involved in each TPP. (For example the policies may identify the specific risk factors to be covered in each combination of land type and land use. Fewer factors will simplify the property planning process and therefore minimise the consent administration process.)
- Providing for a staged approach to implementation, based on “hot spots”.

Some current industry assurance schemes are capable of meeting the policy purpose with little modification and others would need significant change. Considerations for CSG include information sharing and reporting, quality assurance, monitoring and compliance matters and provision for new industries or changes within industries and their assurance schemes.

¹ Industry bodies is used to describe primary producer representative organisations such as Beef and Lamb, HortNZ, Dairy NZ etc. Industry is used to cover all other agencies that need/would to be involved – this has been generalised here. Some options proposed by sectors may be a mix of industry bodies and industry.

CSG should consider;

- Making information sharing (with Council) a requirement of the policy.
- Independent audit mechanisms and a chain of consequences for breaches.
- Fallback provisions - including delivery by WRC and consent requirements - if an industry withdraws from the scheme (i.e. no longer offers a scheme).

4.2.2 Delivery options

The policy approach offered considers two options based on industry schemes for delivery of TPPs. The various agriculture sectors each has an industry scheme (or sometimes more than one) that could be adapted to the purpose of providing TPPs to meet the purpose. Actual development of a TPP for an individual property holder would most likely be carried out by an accredited consultant, to standards defined in the industry scheme, and these standards would be set by the WRC policies. The farm consultancy industry which has the necessary farm systems understanding on which to base this work is currently fully employed providing services relating to “grass and cows” and may have little capacity or appetite for taking on new challenges such as this.

Currently there is an existing training and accreditation system for effluent system design and installation, and for nutrient management advisors, but there is a significant gap in relation to accrediting sediment and bacteria management advisors. These are fields currently dominated by regional council land management staff and there is no related accreditation system. It should be noted that the needs of such a scheme will be determined by the policy design – providing very clear specific policies to limit the complexity of the compulsory elements of a TPP will simplify the requirements of an accreditation scheme in a similar way to that described for consent processing in 4.2.1 above.

In light of potential capacity and gaps in expertise of advisors in relation to some of the contaminants and mitigation options being covered by this plan change, when exploring how to implement and design the policy, the CSG should consider;

- Lag times required to establish a training programme and accreditation scheme for sediment and bacteria advisors and who would be responsible for the programme or scheme.
- What lag times would mean – ie if we are asking landholders to complete accredited plans and there are not the resources available to implement them
- Providing for independent auditing of accreditation schemes, including a chain of consequences for breaches.
- Providing for consented TPPs based on suitably modified existing industry systems and provided by independently audited providers. This provides a built-in quality assurance process for each TPP.

4.2.3 Monitoring and compliance

The TPP report suggests that industry should take initial compliance action “and at some point non-compliance should be referred to Council. The risk must be managed that landholders could spend a long time in the industry scheme being non-compliant, while the industry tries to address problems with the landholder.” (Doc #3563987 dated 9 October 2015, page 6).

Current indications are that there are varying levels of capacity to support this within the various industry sectors. In any case it will be critical to the success of the concept that WRC has access to the TPPs and that robust reporting systems are in place to provide Council and the community with evidence that the expectations of the policies are being met. In the end it is important to note that compliance with regional rules is a matter for Council to pursue through the courts as necessary.

Monitoring processes in relation to compulsory TPPs must be capable of answering the following questions;

- Does the accreditation system meet the requirements of the policies?
- Does the provider have the necessary skills (are they accredited)?
- Does the TPP meet the necessary standard?
- Has the plan been complied with?

For each of these questions a separate monitoring or audit process would be required, there would likely be a different party to be held accountable and there could be a different chain of consequences.

Monitoring of property plans will need to be sufficiently comprehensive to ensure that distinction can be made between the effectiveness of the actions chosen to be in the TPP (i.e. were those actions 'enough') versus the degree of compliance with them.

Establishing and ensuring compliance with property plans will take significant time and resources and methods for reporting on the effectiveness of such an approach in achieving a reduction in the discharge of contaminants to water from land have not yet been considered.

5 Resourcing

Overall the resourcing question will depend on the final shape of the policy approach, how many properties are directly affected, and how fast the implementation roll-out is expected to be.

A key consideration will be the role that industry plays in the implementation of the policies. Some of the policy directions proposed lend themselves well to industry implementation through existing mechanisms that would need only minor adaptation. This would have some advantages including;

- Possible efficiencies of using tried and effective mechanisms for influencing farmer practices.
- Reduced barriers to adoption by property holders when dealing with their own industry systems rather than the Council.
- Sharing of the implementation between Council and industry and drawing on existing industry programmes.

Disadvantages should also be recognised and these include;

- Potential unwillingness of industry to take strong action with its members when necessary.
- Extended chain of reporting and accountability when enforcement action is required. This introduces significant opportunities for errors and systems failure.
- Potential perceptions of capture of the process by industry that may influence community trust in the process to achieve the change required.

6 Some questions for CSG

To help inform planning for WRC and to support the design of an implementable policy options, implementers propose the following questions about resourcing:

Roll out

- What expectations does the CSG have in relation to the timing of actions by landholders that the different implementation methods might require in order to reach the goals sought for the first 10 years? For example, will some of the new rules be timed to come into force later than others? This will have considerable influence on resourcing needs.

Monitoring and auditing

- Ensuring compliance with the requirements of the TPP will have differing funding mechanisms whether controlled via permitted activity or resource consent. A consented regime is more straight forward than a permitted regime.
- Are the necessary expertise and resources available, both within Council and in the wider industry to effectively monitor compliance? These might include suitably skilled service providers, staff, materials or systems.

Property Plan development and providers

- To what extent will the various industries play a role in development and/or monitoring of property plans? What will happen if this changes during the life of the Plan?
- What is the start-up/ lead time required? Is there a service provider training programme and accreditation system in place, or will this have to be developed and rolled out?

7 Specific commentary on catchment wide rules

Implementation staff have provided specific comments on the catchment wide rules that were presented to CSG 18 for discussion. These are contained in Table 1: Implementation considerations for possible catchment wide rules. (Attached)

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Table 1: Implementation considerations for possible catchment wide rules

The table below is taken from material presented to the CSG 18 (document 3494533/v5) but with an additional column (“Implementation considerations”) added.

NOTE Current WRP rules in plain font and *possible new rules or conditions in italics*.

Activity	Classification	Comment/Key Condition	Implementation considerations	Reference	Basis for new rule/change
Stock access to surface water – river and lake bed disturbances					
Deer and cattle in water and Effects of stock crossing	Prohibited	<p>By [date], it is a prohibited activity to allow dairy, beef meat cattle, domestic farmed deer, domestic farmed goats and horses unrestricted access to a river or lake bed.</p> <p><i>This rules applies to all land in the Waikato and Waipa River catchments excluding [insert descriptor of cut-off/threshold e.g. of Land Use Class e.g. class 6e or slope greater than 25 degrees]</i></p> <p><i>In the context of this rule unrestricted access means the ability for stock to enter a river or lake bed without limitation, and includes moving through the bed of a river or lake without provision for regular stock crossing in place.</i></p> <p>Advisory notes: <i>Practical means of compliance with Rule X.X.X include, but are not limited to:</i></p> <ul style="list-style-type: none"> <i>a) The use of bridges or culverts</i> <i>b) Fencing of riparian areas</i> <i>c) The use of gates in conjunction with fencing</i> <i>d) Provisions of troughs for livestock watering in adjacent fenced pasture areas</i> <i>e) Construction of crossings so as to be direct a route across the bed of the river or lake as practicable</i> <i>f) Construction of hard entry and exit points at livestock crossing sites.</i> <p><i>Refer to sections 4.2.8 Bridges, 4.2.9 Culverts and 4.2.11 Fords for rule requirements when constructing these structures.</i></p>	<p>Is it expected that Council staff will actively monitor this or enforce on the basis of complaints? The former would require a more significant scale of resourcing than the latter.</p> <p>Exceptions based on land classes would be difficult to enforce. LUC mapping is not considered sufficiently accurate enough/definable on the ground to be used in a regulatory context. Slope criteria equally has some difficult definition and measurement implications for enforcement.</p> <p>Caution should be applied when including exemptions and exceptions in general rules, to ensure these do not lead to confusion as to who is affected by the rule and who is not.</p>	<p><i>New rule</i></p> <p><i>Replaces existing stock in water bodies rule in WRP</i></p>	<p>CSG have discussed which stock should be excluded. The effects based approach in the existing Waikato Regional Plan is difficult for farmers to know if they are compliant and for council to assess.</p> <p>Staff developed a new rule based on the thresholds indentified by CSG. The basis for prohibited status is that there is a general expectation that stock in waterways should not be allowed. There should be provision for stock crossings but the effects of that need to be managed.</p>
Managing intensification and new entrants – non-point sources discharges					
Managing intensification and new entrants	-	<p><i>Managing intensification within a land use and conversion from one land use to a more intensive land use.</i></p> <p><i>This catchment wide rule depends on what other policy approaches CSG decide on. For instance, if a property level limit for N is set then this issue is dealt with.</i></p>	<p>This implies anyone wanting to intensify would need records to identify past and current intensity. Is a benchmarking process envisaged to achieve this as it may be unenforceable without it.</p>	<p><i>New rule</i></p>	<p>A key mitigation to reduce contaminants is de-intensification. If land uses are able to increase discharges then the progress made by the other mitigations may be negated by intensification within land uses and changes in land use to more intensive, and higher discharging, land uses.</p>

Activity	Classification	Comment/Key Condition	Implementation considerations	Reference	Basis for new rule/change
		CSG may also wish to consider if this rule applies only in certain parts of the catchment.	Definitions of intensity of a range of land uses will be required.		
Setbacks – accelerated erosion					
Setbacks from river and lake beds	-	<p>Currently the WRP requires a setbacks as part of a permitted activity as follows:</p> <ul style="list-style-type: none"> • 5m setback from water when re-planting forestry (chapter 5) • 2m setback from water when cultivating land (chapter 5) <p>And as a condition of consent: 3m setback and riparian management as part of a dairy shed and milk cooling water take (chapter 3).</p> <p>If cultivating or clearing vegetation within the catchment of, or 10m of (whichever is lesser), a cave or sinkhole then it is a discretionary activity (chapter 5).</p> <p><i>All productive use of the land for forestry operations, farming or cultivation must be set back from river or lake beds.</i></p> <p><i>This can be incorporated in a number of ways:</i></p> <ul style="list-style-type: none"> • Write a general rule which covers all land uses, or • Specify the same setback but in different rules for different sectors e.g. <ul style="list-style-type: none"> ○ In new prohibited activity stock exclusion rule ○ In a new clause for forestry, see below ○ Changing the existing setback for cultivation 	<p>For those that are unable to (or choose not to) comply with the PA rule, does the CSG envisage the ability for a landowner to seek resource consent?</p> <p>What are the expectations regarding cultivation on steeper slopes? (Cultivation is currently not regulated by the plan rules except within 2 m of waterbodies).</p>	<p>Currently chapter 5 WRP forestry, vegetation clearance and cultivation</p> <p>Currently chapter 3 WRP dairy shed water takes</p> <p><i>New rule for other land uses</i></p>	<p>CSG suggested.</p> <p>This is a mitigation in the modelling which is utilised in the steps towards achieve Scenario 1.</p> <p>This would make a setback a requirement across all land uses.</p>
Exclude low intensity land uses from some rules – non-point sources discharges					
Catch-all rule to exclude low intensity land uses from some rules	Permitted	<p>This rule will depend mainly on the other policy approaches that CSG decides on. For instance, it may be to exclude low intensity land uses from a property level limit of N, or from having to prepare a tailored property plan.</p> <p>CSG would also decide if low intensity land uses are excluded from any catchment wide rules.</p>	<p>Exclusion based on land use intensity require a clear definition of intensity or list of those land use types/categories.</p> <p>Caution should be applied when including exemptions and exceptions in general rules, to ensure these do not lead to confusion as to who is affected by the rule and who is not.</p>	New rule	CSG suggested
Forestry harvesting – accelerated erosion					
Harvesting of production forestry	Permitted	<p>Forestry harvesting and replanting is permitted provided it complies with a number of conditions.</p> <p><i>Add to the current conditions in Chapter 5 to now</i></p>	<p>Any requirement in a permitted activity rule for lodgement of plans with Council, or notification of Council, has potentially significant administrative and practical resourcing implications</p>	<p>Currently chapter 5 WRP</p> <p><i>New conditions added</i></p>	CSG sector representative for forestry suggested.

Activity	Classification	Comment/Key Condition	Implementation considerations	Reference	Basis for new rule/change
		<i>also require a Harvest Plan, a Sediment and Erosion Control Plan, to notify Council prior to commencement of works and to provide a copy of the plan(s) to Council.</i>	for implementation. For example, does the lodging of plans imply that Council would play a role in vetting the quality of plans or enforcing compliance with them? This moves away from the general concept of what a permitted activity is – i.e. an activity that is sufficiently minor that no Council intervention is required. The vetting and compliance follow-up of plans will require administrative infrastructure to be put in place, resources to be deployed and costs to be incurred which, under the law as it presently stands, are not easily recoverable for permitted activities.		
Roading and tracking – accelerated erosion					
Roading and tracking	Permitted activity Controlled and discretionally	Roading and tracking is permitted provided it complies with a number of conditions. If roading or tracking is undertaken in a high risk erosion area it is a controlled or discretionary above certain thresholds. <i>Add to the current conditions in Chapter 5 to now also require an Erosion and Sediment Control Plan for earthworks.</i>	Ditto the comments as for Forestry.	Currently chapter 5 WRP <i>New conditions added</i>	Suggestion from CSG to encourage better practice earthworks through erosion and sediment control plans.
Cultivation – accelerated erosion					
Cultivation	Permitted activity Controlled activity	Soil cultivation is permitted adjacent to water bodies as long as it is not undertaken closer than 2 metres from a bed of a river or lake and as long as the suspended solids standard is not breached (this is linked to the water classes standards). Soil cultivation is a controlled activity if it occurs within 2m of a bed of a river or lake. <i>Add to the current conditions in Chapter 5 to now also require an Erosion and Sediment Control Plan for cultivation.</i>	Ditto the comments as for Forestry.	Currently chapter 5 WRC <i>New conditions added</i>	Suggestion from CSG to encourage better practice for cultivation through erosion and sediment control plans.
Farm animal effluent – discharges					
Farm animal effluent	Discharge of treated farm animal effluent to land: Permitted activity and Discretionary activity	Discharging treated animal effluent from sheds, feed pads and stand off pads is permitted to land as long as the comply with certain conditions including no direct discharges to water or effluent entering surface water, treatment and storage of effluent and application rate. If those conditions cannot be met it is a discretionary activity.	Rules that aim to achieve such objectives would need to be supported by a robust and clear policy framework.	Currently chapter 3.5 WRP	Suggestion from CSG to have no more direct discharges to water from effluent ponds (unless there is a very good reason why it can't be land based disposal). Staff implementation experience is that some parameters in the existing rules are difficult to monitor so difficult for the regulated and regulator to determine compliance. Current

Activity	Classification	Comment/Key Condition	Implementation considerations	Reference	Basis for new rule/change
	<p>Discharge of treated farm animal effluent to water: Discretionary</p> <p>Discharge of untreated effluent: Prohibited</p> <p><i>Permitted</i></p> <p><i>Discharge of treated farm animal effluent to water: Non-complying</i></p>	<p>Discharging treated effluent to water is a discretionary activity (for example 2 pond systems).</p> <p>You cannot apply for a consent to discharge untreated animal effluent.</p> <p><i>Change conditions in the permitted activity rule (for example the application depth, new level would need to be based on technical advice.)</i></p> <p><i>Rules that promote phasing out of inappropriate systems and phasing out of consents for direct discharges to water.</i></p>		<p><i>New conditions added</i></p> <p><i>Possible new activity class</i></p>	<p>gaps in the rule around capture of solids from infrastructure and application loading.</p>
Fertiliser – non-point sources discharges					
Fertiliser application	Permitted activity	<p>Fertiliser application is permitted provided the conditions are met, which include no direct application to water, management of the odour and application drift, application standards, and a requirement to prepare a nutrient management plan where rates greater than 60kg/N/year or if fertiliser is being applied to the same area of land that had farm animal effluent applied to it within the preceding 12 months.</p> <p><i>This catchment wide rule depends on what other policy approaches CSG decide on. For instance, if a property level limit for N is set or a tailored property plan is required this may over-ride this rule.</i></p> <p><i>Alternatively there could be a separate stand-alone catchment wide rule, for example to guide the development of a tailored property plan.</i></p>	<p>Note that currently there are ambiguities in the interrelationship between the fertiliser rules and the animal effluent discharge to land rules. This is an opportunity to clarify that matter.</p>	<p>Currently chapter 3.9 WRP</p> <p><i>New rule or new conditions added</i></p>	<p>Staff implementation experience is that some parameters in the existing rules are difficult to monitor, and so difficult for the regulated and regulator to determine compliance.</p>