

Report to the Collaborative Stakeholder Group – for Agreement and Approval

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Date: 20 January 2016
To: Collaborative Stakeholder Group
From: CSG Independent Chairperson – Bill Wasley
Subject: Interim Catchment-wide rule to prevent land use change
Section: **Agreement and Approval**

Disclaimer

This report has been prepared by Waikato Regional Council policy advisors 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 a drafted interim catchment-wide rule for the Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments (“the Plan Change”) to manage land use change that increases discharges.

Recommendation:

1. That the report [Interim Catchment-wide rule to prevent land use change] (Doc #3652752 dated 20 January 2015) be received, and
2. That the Collaborative Stakeholder Group:
 - a) Agree that the information contained in Sections 2, 4 and 5 of this report accurately record CSG's development of rule options for managing intensification and land use change;
 - b) Agree that the information contained in Section 7.1 of this report accurately record the reasons why the land use rule option has been progressed;
 - c) Use the draft rule contained in Section 7.2 of this report as the basis for finalising what to take to the focused sector engagement in February 2016.

2 Background

This report outlines the no further intensification (increases in discharges) and /or land use change options considered by the CSG and the new rule option considered at CSG 21.

At CSG workshop 18 the CSG proposed a Catchment Wide Rule to manage intensification while other policies are being implemented. This rule was described generally as:

If a landowner exceeds their benchmarked Overseer number for diffuse nitrogen discharges more than 10% in a year, they are required to obtain a resource consent (CSG Workshop 18 notes).

(refer to Appendix 1 for more detail on the development of this rule).

At CSG 19 the question was asked by the CSG if a variation on this approach could be a rule that stopped the conversion of land, for example plantation forestry to dairy (CSG Workshop 19 notes). See Option B below for a description of this option.

At CSG 20, the CSG requested a report to CSG21 (Dec 17/18 2015) on a definition of intensification and a rule that is effects-based that the CSG could consider (draft CSG Workshop 20 notes). See option D below for a description of this option provided at CSG 21.

At CSG 21 a report was provided on the development of an interim policy to manage discharges, land use change or changes within a property that increase the overall property discharges (Waikato Regional Council 2015).

3 What we know

The scenario modelling (Doole et al 2015) has indicated the scale of change that needs to happen across the catchment to achieve water quality improvement. The Technical Leadership Group also modelled (on CSG request) a staged example of how to achieve this change.

- This modelled change included **no further intensification or land use change that increases discharges, de-intensification of existing land use, a range of mitigations** (some complex and expensive, some less complex and relatively less costly), and **land use change to reduce discharges**. Notably edge of field mitigation is used extensively in the modelling to achieving the water quality outcomes
- Under the scenario modelling, (given the different attribute bands selected, the current water quality and the load to come across Freshwater Management Units, FMUs), the modelled changes involve the need for some landholders to do more than others.

The starting point in the modelling (even though the model does not capture changes over time) is that **Good Management Practice (GMP) is assumed** and there **is no increases in discharges** (e.g. land use change or intensification with increased discharges) while the mitigation and land use change to decrease discharges occurs. Therefore the starting point to achieve desired outcomes is that there is no increase in discharges (i.e. the hold the line), and that is GMP on its own is not sufficient.

In order to achieve the water quality outcomes the behaviour change achieved by the policy package needs to reflect equivalent mitigations, de-intensification and land use change to those in the scenario modelling.

4 Discussion at CSG 21

Based on a presentation by policy staff and report tabled at CSG 21 the group had a discussion of the types of rules they are exploring to manage intensification (Intensification – interim catchment wide rule WRC 2015, Doc#3631568).

The options considered either:

- Allow change (i.e. resource consent) but manage the effects,
- Restrict discharges based on a modelled number , or
- Stop land use change to uses which result in increased discharges.

Below is a summary of the options outline in the report to CSG 21 (WRC 2015, Doc#3631568).

Option A: Increases in discharges beyond 10% of a baseline level of nitrogen required a resource consent (option taken to October 2015 community consultation).

Option B: Certain land use changes are prevented e.g. no conversion of production forestry to dairy

E.g. Landholders cannot change land use after plan notification e.g. forestry converting to dairy, drystock to dairy, drystock to dairy support, forestry to pasture/arable, etc

Option C: Land use or intensification occurs but effects are managed (e.g. rule similar to Environment Southland and South Waikato District Council)

Option D: Landholders can continue farming activities¹ in same way (i.e. “current” discharge levels) as they are farming in 2016, as long as there is no intensification (as defined²) but any overall increases will require a resource consent (operate under current N discharge levels).

Refer to report (Intensification – interim catchment wide rule WRC 2015, Doc#3631568) for more on option A, B, C and D. The group conversation about the options above to manage intensification/land use change (A, B, C and D) at CSG 21 raised a number of points. Refer to workshop notes for detail (Draft workshop CSG 21 notes).

Following this conversation a small group of CSG members were tasked to work on a variation on the intensification options above. The small group reported back the following day on their idea to the broader group. The CSG description of the rule was:

Option E: For the first 5 years from notification any increase in discharge of any of the four contaminants will require a non-complying resource consent

- Noting that the onus would be on the applicant to demonstrate there will be no more than minor effects from the increase in any or all of the contaminants.
- Noting that there may need to be an exemption of some activities that the group want to occur without requiring a resource consent e.g.

¹ Farming activities include the use of land for pastoral, cropping, vegetable growing, horticulture and farm forestry and excludes land used for commercial forestry and land that is shrubland or indigenous forest.

² Intensification is where discharges leaving a farm enterprise have increased. The OVERSEER® nutrient model (Overseer) will be used to assess increases. A rolling five year average of the total kilograms of nitrogen leached per year from the farm enterprise will constitute an increase in discharges. A farm enterprise is where farming activities occur in the same ownership in the same Freshwater Management Unit. A farm enterprise may constitute one or more land parcels in the same ownership that are not contiguous.

forest harvesting that will increase sediment and Nitrogen, seasonal rotation horticulture, new tourism.

The CSG then did an exercise where they compared Option E with Option B. An outline of the discussion about these 2 options is captured in section 5 of this report.

5 Effects-based rule vs. land use rule

The CSG compared an effects-based rule that manages any increase in discharge of the four contaminants by requiring a resource consent, with an option that they described as simple but rough and ready description of what we don't want to see, where a landholder cannot change land use (e.g. trees to pasture, drystock to dairy).

The pathways and approach described by the CSG for these 2 policy options (options E and B) was:

Effects-based **Option E** – Pathway: Any increase in discharges requires a resource consent, landholders prove that effects are no more than minor.

- The CSG felt this option captures all the behaviour they want to and allows activities they want to happen (via exemptions e.g. forestry harvesting and horticulture) or

Description of land use change **Option B** – Pathway: Landholders prevented from changing land use e.g. from drystock to dairy.

- The CSG felt this option would catch any large land use change. That it might not capture some change such as stock change within enterprise e.g. sheep and beef.

The CSG noted or raised questions about the land use change **option B**, including:

- Where does settlement land sit in the while this rule is in place, and intensification?
- Rule to be temporary, less ambiguous, capture major land use change while roll out other policy approaches.
- Issue is measured retrospectively - Will catch (through other policy) all those who intensify through benchmarking but not until next policy in place (and people will then have to operate from former levels of discharge).
- Doesn't capture everyone, deal with intensification and may be perverse behaviour.

The CSG noted or raised questions about effects-based **option E**, including:

- Where does settlement land sit in the while this rule is in place, and intensification?
- Rule requires that people prove effects are no more than minor; however rule is more ambiguous.
- Capture and require many activities to get a resources consent e.g. septic tanks, subdivision.
 - Would require a lot of specific exemptions to be listed including those noted above (e.g. harvesting forestry, seasonal horticulture changes etc).

The CSG noted or raised thinking about the relationship and behaviour change required with the next parts of the policy mix/package, including:

- What happens when people have property plans under the property management plan rule but have intensified in the preceding years – adjust people back to level prior to plan change and then lower discharges?
- The need to consider the whole policy approach including allocation and how these relate to intensification for some e.g. ecotourism.

6 Exemptions for particular users of the resource

There have been questions and discussion by the CSG around an exemption or separate rule (i.e. with different requirements) that provides for some users to change land use (or exemption from rules that restrict intensification). This concept has also been a significant point in CSG allocation discussion. There are still question and decisions by the CSG to be made around this.

More information has been provided to the Group on defining Maori Owned land outlined in report to go to CSG workshop 22.

7 Land use rule

7.1 Reasons for progressing with land use rule

From discussion by the CSG (Workshop 21) the land use option (**Option B**) is being progressed based on discussion by the CSG that this approach:

- Catches the large land use changes (and therefore increases in discharges)
- Rule to be temporary, less ambiguous (than **option D**), can be in place immediately (not requiring benchmarking through Overseer), it captures major land use change, while roll out of other policy approaches.

7.2 Possible approach to land use rule

This approach is described as interim and the intent is for it to be reviewed once property level numerical limits and discharge allocation are implemented.

Refer to Text Box 1 for a draft example of a non-complying land use change rule discussed by the CSG at workshop 21. As written this non-complying rule would be in place until it is removed from the Waikato Regional Plan/replaced when future plan changes set property level numerical limits and discharge allocation. The 2016 plan change can include policy direction that this rule would be reviewed when this new allocation and property limits are written into the plan and made operative.

The rule has a non-complying activity status. This means that the applicant will have to prove the effect of any land use change applied for is minor, or not be contrary to the objectives and policies in the Plan (refer to Appendix 2 for RMA section for consent authority considerations when granting non-complying consent). There is potential for applicants to argue that relative to overall load, the effects of their proposed land use change would be no more than minor. Policies could be drafted to clarify that the intent of the rule is to capture the cumulative effects of many 'minor' discharges and that this should not be used as a reason to grant consent.

Text box 1 Draft Land use change rule – non complying

Non-Complying Activity Rule - Land Use Change³

From the date of notification of Plan Change 1 Healthy Rivers Wai Ora the following activities:

1. The change in land use from indigenous vegetation for the purposes of: planted production forestry, dairy grazing, dairy production, grazing of livestock, horticulture or cropping, or
2. The change in land use from planted production forestry for the purposes of: dairy grazing, dairy production, grazing of livestock, horticulture or cropping, or
3. The change in land use from grazing of livestock for the purposes of: dairy grazing, dairy production, horticulture or cropping, or
4. The change in land use from dairy grazing for the purposes of: dairy production, horticulture or cropping, or
5. The change in land use from cropping for the purposes of: dairy production, grazing of livestock or horticulture.

are a **non-complying activity** (requiring a resource consent)

Advisory notes:

- The change in land use includes where there has been a greater than 2 year gap since last run as that particular land use.
- This rule does not include seasonal variation and or reasonable seasonal rotation of crops within an enterprises existing at the date of plan change notification.

Definitions

Cropping: Sow or plant (land) with plants that will produce food or fodder, especially on a large commercial scale

Dairy grazing: land used under a third party grazing arrangement between the owner of livestock and another landowner for the purpose of temporary grazing; and off farm dairy production grazing

Dairy production: The land used for farming cattle, goats or sheep for milk production.

Horticulture the growing of flowers, fruit and vegetables

Indigenous vegetation^o: Vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance.

Livestock (Definition for this rule): Domestic animals generally; any animals kept or dealt in for use or profit

Planted production forest^{*}: A forest of selected species of trees that are specifically planted, managed and harvested for the production of timber or other wood based products, and includes understorey that has established beneath the canopy and areas that are demonstrated to be failed plantings from the previous rotation.

* Denotes Resource Management Act 1991 definition

^o Denotes Waikato Regional Plan definition

³ Note this rule has not had a legal check

8 Conclusion

This report outlined the CSG development of the rule to manage intensification or land use change until property level numerical limits and discharge allocation are implemented.

Most recent CSG discussion suggested that the group wanted to explore a rule to focus on major land use change (policy option B). The group felt this option whilst covering fewer activities, (than intensification approach) would be less ambiguous than a rule that required a resource consent for any increase in discharges. It could also be in place from notification, as it does not require benchmarking. However, this rule will not capture changes within a property that increase the overall property discharge such as intensification of farm operations e.g. existing dairy or dry-stock farms intensifying production.

There are also still rule exceptions and considerations for e.g. ecotourism development still to be finalised. There is potential that this could be dealt with in some way through resource consenting.

The land use rule whilst managing land use change, does not manage for no further intensification in the catchment. The group is therefore proposing that when property plan and Nutrient Management Plans are in place (including benchmarking) landholders being required to operate at or below their discharge levels from plan notification date. This suggests that part of the interim approach may include a requirement for all landholders to collect information and maintain records from operations prior to the plan change – where they will eventually be benchmarked from. A base line rule that captures information about what is currently occurring on farmers would help support this approach. This rule is currently part of the overall plan package for managing nitrogen and outlined in report to go to CSG 22 on the overall policy approach and property plan subgroup (WRC 2016, Doc#3673247). The CSG have further work to do to clarify what the reduction targets are in the first plan change period and how landholders would be required to meet these.

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Appendix 1: CSG development of rules to control intensity or land use

Appendix 2: RMA section 104D – Particular restrictions for non-complying activities

References

Collaborative Stakeholder Group (“CSG”) Workshop 18 Notes (Day two) 14 October 2015, Don Rowland Centre, Lake Karapiro. Doc#3577749.

Collaborative Stakeholder Group (“CSG”) Workshop 19 Notes 23 24 November 2015, Don Rowland Centre, Lake Karapiro. Doc#3629626.

Collaborative Stakeholder Group (“CSG”) Draft Workshop 20 Notes, 9 December 2015, Don Rowland Centre, Lake Karapiro. Doc# 3638362.

Collaborative Stakeholder Group (“CSG”) Draft Workshop 21 Notes 17 and 18 December 2015, Don Rowland Centre, Lake Karapiro. Doc#3646560.

Doole, G, Elliott S, and McDonald G (not in press 2015) Evaluation of scenarios for water-quality improvement in the Waikato and Waipa River catchments Assessment of second set of scenarios 24 September 2015 (Confidential draft report issued to CSG only. This report is not yet approved by the TLG).

Waikato Regional Council (2015) Implementation considerations for policy design. Report to the Collaborative Stakeholder Group - for Information, dated 11 November 2015. Doc#3608886.

Waikato Regional Council (2015) Intensification – interim catchment wide rule. Report to the Collaborative Stakeholder Group - for Agreement and Approval, dated 15 December 2015. Doc#3631568.

Waikato Regional Council (2015). Possible catchment wide rules and how they were developed. Report to the Collaborative Stakeholder Group - for Agreement and Approval, dated 9 October 2015. Doc# 3494533.

Waikato Regional Council (2016). Defining Māori Land, Report to the Collaborative Stakeholder Group - for Information, dated January 2016. Doc#3652739.

Waikato Regional Council (2016). Overall Approach and report back from the CSG property plan subgroup 11 January 2016 workshop - for Agreement and Approval, dated 19 January 2016. Doc#3673247.

Appendix 1. CSG development of rules to control intensity or land use

Table 1 Record of key information and CSG decisions about initial controls on intensity of land use

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| <p>CSG workshop 18</p> <p>13 and 14 October 2015</p> | <p>A report was provided that outlined rules for the CSG to decide what catchment wide rules to consult with the community in the October - November 2015 engagement period. This included a consideration that if there was to be a rule/s to manage intensification and new entrants what would that look like. The CSG developed a no intensification rule: 10% over benchmarked Overseer number for N in a year (CSG Workshop 18 notes Doc#3577749).</p> <p>Excerpt from report (in table format in report):</p> <p>Activity: <i>Managing intensification and new entrants</i></p> <p>Comment/Key Condition: <i>Managing intensification within a land use and conversion from one land use to a more intensive land use. 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. CSG may also wish to consider if this rule applies only in certain parts of the catchment.</i></p> <p>Basis for new rule: 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> <p>(Source Table 1: Possible catchment wide rules and how they were developed 9 October Doc# 3494533)</p> |
| <p>Consultation</p> | <p>From the CSG discussion at workshop 18 the CSG consulted on rules that would require any landholder that increased their nitrogen losses by more than 10% of their benchmarked figure would require a consent. The CSG approach included that this rule would be temporary until property level limits are in place (CSG Workshop 18 notes Doc#3577749).</p> |
| <p>CSG 19</p> <p>23 and 24 of November 2015</p> | <p>A report to the CSG with feedback on this rule from WRC implementers was:</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” (Table 1 page 17 WRC (2015) Implementation considerations for policy design. Doc#3608886).</p> <p>At this workshop the question was asked by the CSG if a variation on this approach could be a rule that stop people turning land farmed under plantation forestry into dairy farms⁴ (Workshop 19 Notes Doc#3629626).</p> |
| <p>CSG 21</p> <p>17 and 18 December</p> | <p>A report to the CSG at CSG 21 provided an update on the development of an interim policy to manage discharges from land use changes (plantation forestry to pasture conversion) or changes within a property that increase the overall property discharge</p> |

⁴ Noting that the scope and focus of this would be less than the rule that was part of the community engagement – that would manage any increase in discharges not just “forestry conversion to dairy”.

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| 2015 | <p>and policy options to manage further increase discharges (WRC 2015 Intensification – interim catchment wide rule. Doc#3631568).</p> <p>CSG developed an alternative rule:</p> <p>For the first 5 years from notification any increase in discharge of any of the four contaminants will require a non-complying resource consent</p> <p>Noting that the onus would be on the applicant to demonstrate there will be no more than minor effects from the increase in any or all of the contaminants.</p> <p>Noting that there may need exemption of some activities that the group want to occur without requiring a resources consent e.g. increases from forest harvesting, seasonal rotations in horticulture and new tourism.</p> <p>(draft workshop 21 notes Doc# 3646560)</p> |
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Appendix 2: RMA section 104D

104D Particular restrictions for non-complying activities

(1) Despite any decision made for the purpose of section 95A (2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.