Memo

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To:	Māori land sub-group, Healthy Rivers Wai Ora
From:	Emma Reed, Policy workstream
Subject:	**Policy options for discussion by Māori land sub-group**

1 Purpose

The policy mix for Healthy Rivers currently includes a policy and rule to restrict land use change from some land uses to more intensive land uses. The purpose of this memorandum is to outline possible policy options for developing a counterbalancing policy[1] to allow for flexibility for land that has not been able to be developed for legal/historical reasons/impediments, in the next 10 years (until the next plan change).

The memorandum is intended to inform CSG's Māori Land sub-group discussions.

2 Background

CSG has been discussing the implications of the policy approach for Māori owned land over the past few months, and agreed that a sub-group should be formed to investigate options for an enabling provision to allow for the flexibility of Māori owned land (CSG focus day workshop notes DM#3727426).

The Māori land sub-group met for the first time on 15 March 2016 (see notes DM#3723604). The sub-group confirmed the intent of the sub-group was to develop counterbalancing policy to allow for flexibility for land that has not been able to develop for legal/historical reasons/impediments. For the purposes of this report this land is herein referred to as Te Ture Whenua (TTW) and settlement land.

One of the sub-group members put forward an idea for a possible policy approach to allow for flexibility for TTW and settlement land in the next 10 years (see Attachment 1). The sub-group requested that staff provide feedback on this option and alternative options be brought back to the sub-group.

3 Current policy mix

As a recap, currently all policies and rules apply to all land, including TTW and settlement land, which is being farmed in some way. All of those rules are limits which control the amount of contaminants discharged to the water.

For example all TTW and settlement land will need to:

- exclude stock by the required dates, and
- undertake Nitrogen benchmarking, and

[1] The policy mix for Healthy Rivers current includes a policy and rule to restrict land use change from some land uses to more intensive land uses.

- comply with conditions for managing risk on the property, OR
- develop a property plan through an industry scheme or a resource consent by the required dates for their sub-catchment, to operate at good management practice relating to the risks on that property (sub-catchment dates being developed through prioritisation work currently being done by TLG).
- properties over the 75th percentile in nitrogen leached per sector per FMU will be required to make reductions[2].

In addition, in the next 10 years any land that is in indigenous vegetation or forestry and is wanted to be changed to animal farming, or drystock to be changed to dairy, the landholder would need to apply for a non-complying resource consent and go through the application process. This will likely involve:

- an assessment of adverse effects on the environment,
- assessment against objectives and policy in the plan change which outlines strong guidance on wanting to restrict the impacts of cumulative effects of discharges,
- assessment whether to publicly notify the application, and a possible subsequent public hearings and appeal process.

This rule is described in 'Restoring and protecting our water: Te whakapaipai me te tiaki i ō tātou wai' page 49 as follows:

Rule 2a & 2b

Rule 2a: The change of land use from:
a) indigenous vegetation or plantation production forestry to animal farming or cropping; or
b) drystock to dairy (milking platform)
is a **non-complying** activity from date of notification until 10 years after Plan Change 1 is made operative.

Rule 2b: Commercial vegetable production net land area in the catchment is capped at current hectares and is a **controlled** activity from date of notification until 10 years after Plan Change 1 is made operative (bearing in mind rotational history).

This sub-group is focusing on the additional restrictions that are imposed by Rule 2a, and how TTW and settlement land may have added flexibility for the next 10 years (i.e. while the interim rule is in place until replaced when property level limits are allocated in next plan change). This was described (in the same way that the whole policy mix is) as a transition towards allocation based on natural suitability of the land. The approach to TTW and settlement land is that areas of this land are currently un- or underdeveloped due to historical and legal impediments, and so should be able to continue on the current trajectory towards natural suitability, whilst managing the effects of any development in a controlled way.

This is seen by the sub-group as a matter of equity in that land that has not been subject to such encumbrances and impediments, has already had the opportunity to be developed. Owners of that land, who wish to change land use, will need to assess and manage the risk of contaminants leaving the property, and the transition towards allocation based around natural suitability is likely to require decreases in contaminants.

4 Policy options

As noted above CSG has already developed a policy mix framework which will form Plan Change 1 and the first stage along the way to achieving the Vision and Strategy. Any policy approach this sub-group agrees on will need to fit with the overall policy approach.

[2] Also, this sub-group will need to consider if it is acceptable that any TTW and settlement land land which falls within the top 75% percentile N leaching per sector per FMU which will have to reduce leaching be unable to change land use to a more intensive land use.

Attachment 2 contains a table outlining policy options for a counterbalancing policy to achieve flexibility for TTW and settlement land. Five of the options which are considered to have the most potential are described in more detail below.

CSG has considered a number of alternative policy approaches for non-point discharges to achieving the water quality outcomes and objectives. The options which have not been progressed, and why, are outlined in Section 20, Table 9 of the 'Restoring and protecting our water: Te whakapaipai me te tiaki i ō tātou wai'.

If the sub-group were to progress a policy option for TTW and settlement land that has not been chosen for the overall approach, there needs to be clear reasons why it was not appropriate for the whole plan change, but is appropriate for this topic, and how it will interact and relate to the whole policy package.

Option 1: Cap and trade within TTW and settlement land (CSG representative idea)

One sub-group member provided an idea at the last sub-group meeting. See Attachment 1 for a description of the idea.

A cap and trade policy approach provides an effective and efficient way to meet a desired objective. In order to have a cap and trade scheme there needs to be the ability to measure, or accurately model to an acceptable level of confidence, the discharges from an individual capped entity. The CSG has agreed not to set property level limits and progress a cap and trade across the entire catchment for the following reasons:

- There is no way to measure or model sediment, microbes or phosphorus at a property scale.
- There is a tool for nitrogen (OVERSEER) which is most developed for dairy farms, but does not take account of all mitigation or farm types.
- As OVERSEER is being updated it provides different nitrogen leaching numbers for different versions, even if nothing on farm has changed.
- CSG consider that grand-parenting is not the appropriate allocation approach. There is the need for information on discharges at a property scale, including on the capacity of soils to manage nitrogen.
- At this stage the CSG consider that there is a need for more knowledge before an approach can be put in place that fairly allocates responsibility to change at a property level.

A cap and trade within TTW and settlement land poses the same challenges as a cap and trade for the whole catchment, with these additions:

- This option requires all TTW and settlement land to be allocated a discharge right, to be issued a resource consent and to manage their land within that allocation, or purchase allowances from another MOML. It is this memo's authors understanding that flexibility for TTW and settlement land is intended to be available IF a TTW or settlement land landholder chooses to utilise it. This option will result in all TTW and settlement land landholders having to go through a resource consent process, even though some may not want to develop their land or sell their rights in the next 10 years.
- The size of the market is greatly reduced, meaning that the number of potential people to trade with is reduced. This affects the efficiency of this policy as an option.
- As the market is restricted to only TTW and settlement land that means some will need to choose not to develop so that others can (if the initial allocation allowance is less than what is needed for the intended future land use). This may not fit within the sub-group defined policy intent.

- TTW and settlement land landholders who do decide not to develop, and trade their allowance, will gain financially, while other land which is underdeveloped is not provided with that option.
- Other landholders would not have this level of oversight of over their property as the CSG has agreed not to set property level limits.
- How this relates to property level allocation in 10 years is unclear, either TTW and settlement land will remain under the allocation they receive now, or they will be re-allocated in 10 years under a regime which allocates the same across all land ownership types.

The aspects of this idea which the sub-group may want to discuss further are related to providing more certainty and quantifiable parameters about how much land might change and what impact that would have, including:

1) a maximum amount of kg N leached/ha/year allowed by any application under an alternative pathway/rule framework
2) a schedule of land which could utilise an alternative pathway/rule framework.

Option 2: Add to current policy mix at the policy level

The current policy mix would include a reference to TTW and settlement land as part of the policy which will be considered during a decision making process under the current non-complying activity rule. This would require an application for a non-complying resource consent (with the rigour as noted in Section 3), and when each application is made the resource officer undertaking the assessment against the policies would be including that the land is TTW or settlement land as a factor in the decision making (e.g. consent assessment criteria with specific considerations to take into account when considering granting or not granting consent).

A non-complying activity has an additional layer of rigour to other lesser activity classes, as an application needs to pass a 'gateway test'. This test is that the effects of the activity on the environment will be minor or the activity is not contrary to the objectives and policies. This option is aiming to remove one of these gateways by including in the policies guidance on how to manage TTW and settlement land applications under this rule.

This option includes:

1) consistency between landholders as applications are made under the same rule
2) the hurdle of a non-complying activity status
3) opportunity to provide narrative direction through the policy, which could avoid the legal hurdles of describing people rather than activities.

Option 3: Develop new policy and rules

Provide a separate pathway, which mirrors the current approach, for TTW and settlement land. This would include a policy which outlines the intent of the approach, and rules which require resource consents if this change is made.

If this approach is progressed by the sub-group they would need to consider which activity status is an appropriate level of scrutiny for the land use change, and what factors would need to be managed in the new land use (for example the sub-group has already suggested that the type of land that would be considered under this type of pathway would be restricted e.g. certain slopes or LUC class, and that the new land use would have to be managed to best practice).

This option provides:

1) a pathway for TTW and settlement land with a the rule that is less onerous that non-complying
2) potential to be specific about the types of controls that would be put on any new land use

Option 4: Develop a schedule of land which policy/rules could apply to

One of the aspects of the CSG representative idea is to include a schedule in the plan change which lists (or maps) land that could utilise any alternative pathway/rule framework. This is an aspect which could be included in other approaches also.

This option provides:

1) opportunity to provide narrative direction through the policy, which could avoid the legal hurdles of describing people rather than activities, and added specificity by then listing/mapping land that fits that description.

Option 5: Write Rule 2a so it doesn't apply to TTW or settlement land

Write Rule 2a so it doesn't apply to TTW or settlement land. This would mean that TTW and settlement land could change land use, without a resource consent.

TTW and settlement land would still be required to comply with the other rules in the current policy mix (i.e. stock exclusion and preparing a property plan for the new land use).

If this option is progressed the sub-group would need to consider what benchmarking would be required, how the 75th percentile concept would be applied and how this fits with the overall need to manage discharges.

5 Summary of policy options

The Māori owned land sub-group requested policy options for a counterbalancing policy to allow for flexibility for land that has not been able to develop for legal/historical reasons/impediments, and feedback on a CSG representative idea. This report contains eight options (see Attachment 2), five of which have elements with potential that are further discussed in the Section 4 of this report. The options are:

1) Cap and trade within TTW and settlement land (CSG representative idea)
2) Add to current policy mix at the policy level
3) Develop new policy and rules
4) Develop a schedule of land which policy/rules could apply to
5) Write Rule 2a so it doesn't apply to TTW or settlement land

The similarities between approaches are that:

- all have objectives and policy outlining the intent as agreed by the Māori Owned Land CSG sub-group.

The differences between approaches are:

- if the approach fits within the current policy mix approach (i.e. policy instrument) or under an approach the CSG has agreed not to progress.
- the activity status of a consent that TTW and settlement land landowners would need.
- if TTW and settlement land landowners would need a consent at all.

The next steps for the sub-group are to:

- discuss the five options listed above and agree on which, or a combination of which, to progress.
- consider how the chosen approach fits with the benchmarking and 75th percentile concept.
- consider what guidance, if any, will be given about the future property level allocation and how the policy approach for TTW and settlement for the next 10 years fits with that.

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References

Collaborative Stakeholder Group workshop notes Focus day session 26 February 2016 DM#3727426 – draft still to be approved.

Keenan C 2016. Personal communications. Email 21 March 2016 chris.keenan@hortnz.co.nz. DM#3748627

Māori land sub-group notes. Māori land sub-group meeting #1. 15 March 2016. DM#3747040.

Waikato Regional Council 2016. Restoring and protecting our water/Te whakapaipai me te tiaki i ō tātou wai: Overview of Collaborative Stakeholder Group's Recommendations for Waikato Regional Plan Change No. 1 – Waikato and Waipa River Catchments. March 2016. DM#3351821.

Waikato Regional Council 2015. Assessment of policy instruments for sediment using the Draft CSG Policy Selection Criteria. Agreement and approval report dated 25 May 2015. DM#3258508

Waikato Regional Council 2015. Policy options for sediment, microbes, nitrogen and phosphorus. Agreement and approval report dated 22 June 2015. DM#3425911.

Attachment 1 – CSG member idea for a policy option at Māori land sub-group 15 March 2015

Strawman idea

Objective

- Recognise constraints on developing certain Māori land identified in Schedule Z.
- Provide a certain level of flexibility over next 10 years prior to allocation provision for all land

Policy

Allow for some level of development on land:

Identified in Z

- Timeframe 10 years
- Beyond 10 years
- Four contaminants
- N quantified
- Transfer

Policy

- Competing applications
- Policy to determine how to judge competing applications

Rule RDA (Restricted Discretionary Activity) **-** Application assessed under the certain level

Rule NCA (Non Complying Activity)- Over cap

Rule Transfer - within cap

Schedule X – Cap, distribution of the cap

Schedule Z - Land this applies to

Additional information/clarification questions were sought after the workshop via email by staff from the CSG representative who developed the idea. The following information was provided:

Q. How would the cap be determined?

Modelled at a load that could be expected to be taken up within a ten year period.

Q. Would the cap be allocated at, above or below existing discharges?

Capped hectare rate between 15 – 20 kg with the ability to transfer between parcels to enable intensification above that level. It is potentially easy to allocate 2 rates (for example 10kg at land > 15º, 20kg for land <15º

Q. If above, how much higher?

The problem with taking a "grandparenting" approach is simply this: The high leacher would be able to go higher, the low leachers still get little in terms of development ability

Q. (You mentioned Tukituki average per ha but not sure if you were suggesting that in this case or not) *Sort of - with the proviso of transferability.*

Q. Do all MOML therefore need a consent and to be held to that allocated discharge amount?

Yes - if not, how will a market operate as there are no requirements for people to reduce other than 75%ile and GMP? Transfer would be restricted to parcels of land within the schedule maybe?

Q. What happens for everyone else who doesn't get allocated a property level limit?

They wait until the next plan change.

Q. What happens when everyone does get allocated in 10 years time? Do MOML get re-allocated a new allowance based on natural suitability?

Up for discussion, policy could signal what is likely to happen?

Attachment 2 – Policy options for counterbalancing policy for TTW and settlement land

This table provides a staff overview of policy options for a counterbalancing policy which allows for flexibility for TTW and settlement land over the next 10 year period, prior to property level allocation at a later date. This table will be included in the s32 analysis for this policy.
Staff have highlighted in grey the options which are most promising, and have provided more detail of them in the text above.

Table 1: Policy options for a counterbalancing policy for flexibility for TTW and settlement land

Stick with current policy mix	**Develop new policy/rules - same type of policy as current mix**				**Develop new policy/rules - policy option that CSG has not progressed**		
Stick with current policy mix	**Direction at policy level**	**Different pathway - new policy and rules**	**Schedule of land (could link to either of these options)**	**Write Rule 2a so it doesn't apply to TTW or settlement land**	**Cap and trade – only TTW and settlement land**	**Cap and trade – entire catchment**	**Offsets**
All landholders wanting to change land use would need to apply for a non-complying resource consent to change land use from indigenous vegetation or forestry to animal farming, or drystock to dairy. The CSG has directed the sub-group to investigate alternative policy approaches. This option is described here as a point of comparison. **Option 1**	Include a reference to TTW and settlement land as part of the policy which will be considered during a decision making process under the current non-complying activity rule. Option discussed above, in Section 4. **Option 2**	Provide a separate pathway, which mirrors the current approach, for TTW and settlement land. This would include a policy which outlines the intent of the approach, and rules which require resource consents if this change is made. Option discussed above, in Section 4. **Option 3**	Include a schedule in the plan change which lists (or maps) land that could utilise any alternative pathway/rule framework. This is an aspect which could be included in other approaches also. Option discussed above, in Section 4. **Option 4**	Write Rule 2a so it doesn't apply to TTW or settlement land. This would mean that TTW and settlement land could change land use, without a resource consent. Option discussed above, in Section 4. **Option 5**	CSG representative idea, see Attachment 1. Option discussion above, in Section 4. **Option 1**	Cap and trade across the entire Waikato and Waipa River catchment. Through the initial allocation process TTW and settlement land could be allocated a discharge allowance higher than their current discharges (and need to remain under this allowance) and that amount and any other reduction targets is then made from the rest of the discharges available to other land. This outcome may be achieved by allocating based on natural capability but there are information gaps on what that allocation regime would like so this is unknown at this stage. Setting property level limits and therefore cap and trade has not been progressed by CSG for the following reasons: • No way to measure or model sediment, microbes or phosphorus at a property scale. • There is a tool for nitrogen (OVERSEER) which is most developed for dairy farms, but does not take account of all mitigation or farm types. • As OVERSEER is being updated it provides different nitrogen leaching numbers for different versions, even if nothing on farm has changed. • CSG consider that grand-parenting is not the appropriate allocation approach. There is the need for information on discharges at a property scale, including on the capacity of soils to manage nitrogen. • At this stage the CSG consider that there is a need for more knowledge before an approach can be put in place that fairly allocates responsibility to change at a property level.	Like-for-like offsetting of any intensification with a comparable de-intensification occurring elsewhere. A holder of TTW or settlement land wanting to change land use (and increase discharges) would need to find a landholder willing to undertake actions that result in an equivalent reduction of contaminants, payment would be needed for that to occur, and there needs to be the technical information that the offset is achieving the desired result. Important factors are: • Being able to measure that offsets are equivalent. • Spatial restrictions on where an offset could occur. • The motivation for another party to want to undertake these actions, as there is no requirement for them to make reductions for others and no benefit to them.

Commentary on notification
All applications for resource need to be assessed under RMA sections 95A-E on if to notify. A consent authority must publically notify the application if the activity will have or is likely to have adverse effects on the environment that are more than minor. This is regardless of the activity status.