

# Memo

**File No:** 23 10 12  
**Date:** 7 April 2016  
**To:** Maori land sub-group  
**From:** Emma Reed  
**Subject:** **Cover memo for legal opinion**

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CSG Māori land sub-group requested legal advice for the work they are doing on developing a counterbalancing policy<sup>1</sup> to allow for flexibility for the use of 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 sub-group requested legal advice be sought to identify legislation and case law which would support the proposed policy approach, and which would oppose it. That request was outsourced to Simpson Grierson and the advice is attached. It is important to note that the advice is not WRC's position.

Simpson Grierson were asked to respond to the following questions:

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| <ul style="list-style-type: none"><li>a) What statutory provisions/case law would lend support to the proposed policy intent;</li><li>b) What statutory provisions/case law would argue against it.</li></ul> |
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These questions were given context by supplying the following statement of intent:

*There are historical and contemporary legal impediments (e.g. land confiscation or legal titles) which restrict the flexibility of decision making and use of land to provide for economic, social and cultural wellbeing. Plan Change 1 will place restrictions on land development to protect water quality, which will further reduce the flexibility of the use of that land.*

*The aim of this work is to find a way to achieve the outcome for the river whilst not creating an additional barrier to flexibility for the use of settlement and Te Ture Whenua land.*

Simpson Grierson's advice is attached. The advice provides a summary of the issues in paragraphs 5 to 9, being:

- a) There are potentially significant legal risks with the proposal which may or may not be able to be addressed through the drafting of provisions; and
- b) If Council wishes to develop provisions, the following may assist the drafting of the Proposed Provisions:
  - i) Ensure that they give effect to the objective of restoring and protecting the health and well being of the river, including the objective of avoiding adverse effects of activities on the health and wellbeing of the river; and

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<sup>1</sup> 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. This workstream aims to avoid the unintended consequences of this policy on the relationship of tangata whenua with their ancestral lands.

- ii) Refer to a type of activity rather than a type of applicant; and
- iii) If the Proposed Provisions are to apply to land that only Maori have control over, then to potentially reduce the legal risk it will be necessary to demonstrate (through expert evidence) that the Proposed Provisions will:
  - A. Create benefits that are different/greater than the similar use of non-Maori land; and/or
  - B. Restore and protect the relationship of iwi with the river; and/or
  - C. Be consistent with or give effect to Kaitiakitanga and the principles of the Treaty of Waitangi.

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**Emma Reed**

Policy development workstream  
Waikato Regional Council

**Attachment:** Legal advice from Simpson Grierson dated 8 April 2016 (DM#3764674).