

Report to the Collaborative Stakeholder Group – for Agreement and Approval

File No: 23 10 02
Date: 19 January 2016
To: Collaborative Stakeholder Group
From: Chairperson – Bill Wasley
Subject: **Draft livestock exclusion rule for sector engagement in February 2016**
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:

1. A record of CSG's guidance on livestock exclusion from workshop 21, 17-18 December 2015,
2. WRC implementation and enforcement staff advice on the draft rule, from January 2016, and
3. WRC policy staff's interpretation of both 1) and 2) written up as a draft rule for CSG to use as the basis for finalising what to take to their sectors in February 2016 for consultation.

Recommendation:

1. That the report [Draft livestock exclusion rule for sector engagement in February 2016] (Doc #3651049 dated 19 January 2016) be received, and
2. That the Collaborative Stakeholder Group:
 - a. Agree that Section 3 of this report is an accurate record of CSG's guidance on rule components as discussed at CSG workshop 21, 17-18 December 2015;
 - b. Consider the advice contained in Section 4 of this report from WRC implementation and enforcement staff when developing the draft livestock exclusion rule;
 - c. Agree that Section 5 of this report is an accurate record of the property plan sub-group's recommendation, as discussed on 15 January 2016, to include farm drains and that this idea is developed by staff as a separate rule;
 - d. Use the draft rule contained in Section 6 of this report as the basis for finalising what to take to the focused sector engagement in February 2016.

2 Background

This report should be read in conjunction with the Report to CSG 22 January 28th - 29th, that contains an overview of the CSG approach so far and the CSG Property Plan sub-group report back (see document number 3673247).

For a brief summary of the development of the draft stock exclusion rule see Appendix 1.

3 CSG guidance on rule components

At CSG21, 17-18 December 2015, a report was presented to CSG outlining the main discussions on the livestock exclusion rule to date, the components of the rule with examples from the draft CSG rule, other councils and Land and Water Forum (LAWF) (Waikato Regional Council 2015). CSG then undertook a 'bus stop' exercise where they wrote what each of the components should be for the rule (CSG21 facilitation session notes). This was summarised by the facilitator overnight and presented back to the CSG on Day 2, and is shown in Table 1.

Table 1: Components of the rule from CSG21, 17-18 December 2014

Rule component	CSG 21 – summary of 'bus stop' exercise
Activity status	Non-negotiable bottom lines: Dairy, beef cattle, deer and pigs have to be kept out of permanent rivers, lakes and natural wetlands
Stock type	Dairy cattle Beef cattle Domestic farmed deer Domestic farmed pigs Horses Not: sheep and goats
Date	Dairy milking 2017 All dairy grazing (including 3 rd party) 2020 All others including intensive deer 2025
Definition of exclusion	Stock not able to/don't go there Can include a natural barrier Crossings are managed
Setbacks	Some support for 5m setback required under permitted activity and variable setback through consent
Terrain/intensity	No strong desire to see terrain or intensity included as a factor for exemption
Water body types	Rivers (perennial) and lakes Natural wetlands (intermittent rivers and farm drains to be done by farm plan)

Source: CSG21 workshop notes¹

¹ Note the facilitators summary did not cover the activity status/behaviour change sheet so this was done by policy staff after the CSG workshop

4 Implementation and compliance staff advice on rule components

WRC policy, implementation and compliance staff met in early 2016 to discuss the draft rules that have been developed by CSG to prepare advice from their perspective, including any suggestions for amendments. The main points on the draft livestock exclusion rule from that meeting are included in Table 2.

Table 2: Components of the rule from an implementation perspective and reasons

Rule component	Implementation and enforcement perspective and reasons
Activity status	<p>Support activity status as prohibited as it is clear what behaviour is acceptable and what is not acceptable. This fits with the requirements for a prohibited activity status that the effects couldn't adequately be controlled by conditions i.e. council would not issue a consent for livestock to be in waterways.</p> <p>The prohibited activity status is focused on the activity itself rather than the land use, unlike the permitted activity version which allows the use of land for farming subject to conditions. This is a subtle difference but means an individual would be prosecuted for farming, rather than for the livestock being in water, when enforcing this rule at prosecution level.</p>
Livestock type	<p>Support livestock types CSG are thinking. Noted there are other livestock types that may become more widely farmed such as alpacas, water buffalo or intensive sheep (eg for milking).</p>
Date	<p>Advise combining the dates for dairy milking platform and dairy grazing. Having different dates requires both the farmer and the enforcement officer to be clear which category the farmer is in. It would reduce complexity if the same date was required for all dairy cattle.</p>
Definition of exclusion	<p>Agree with CSG thinking that it is practical for farmers to exclude livestock in a way that makes sense for that farm e.g. no need for a fence if a cliff excludes the livestock from accessing waterways.</p>
Setbacks	<p>Advise CSG continue working on how this might fit into the property plan policy option given TLG advice that 5m setback everywhere is not technically justifiable.</p>
Terrain/intensity	<p>Agree with CSG thinking not to include cut off based on terrain or intensity.</p>
Water body types	<p>Advise the rule should apply to rivers as defined in the RMA. This includes both continually and intermittently flowing waterways². Having a rule which only applies to continually but not intermittently flowing runs the risk that in some cases it would be impossible to enforce this rule, as the onus would be on council to prove beyond reasonable doubt that a stream was continually flowing. An inspection on farm may</p>

² Note the terms 'continually flowing' and 'intermittently flowing' as per the RMA definition of river will now be used in this rule rather than 'perennial' and 'ephemeral' as they are not in the RMA. As a point of clarification intermittently flowing does not cover overland flow during rain events.

	<p>occur at any time of the year so it would be hard to know if the stream stops flowing at certain times of the year (and easy for someone to say that it did stop flowing and therefore the rule did not apply to them).</p> <p>Advise the rule should also apply to constructed wetlands as the environmental impacts of livestock in constructed wetlands would reduce their functioning and the reason for constructing them in the first place.</p> <p>Suggest that if livestock are also desired to be kept out of farm drains that this be investigated as a separate rule. This will help both rules remain clear, as one would apply to natural and modified watercourse, and the other to artificial watercourses. This is particularly the case if they have different thresholds for size. Staff input from Integrated Catchment Management team would be useful when developing a rule on drains.</p>
Additional comments	<p>Further work can be done to better define what is meant by livestock crossing, and how this relates to existing parts of the Waikato Regional Plan e.g. fords.</p>

Source: Waikato Regional Council, 2016

5 Property plan sub-group meeting

The property plan sub-group met on 15 January 2016 to discuss how property plans could be incorporated into the Plan Change (see report to CSG #3673247 for the report back to CSG from the property plan sub-group meeting). The sub-group discussed the link between property plans and the livestock exclusion rule, and concluded that farms drains be included in the livestock exclusion rule. In particular that the CSG should also use the same threshold for the size of farm drains that was included in the Fourth Land and Water Forum Report. The sub-group also concluded that the CSG should use a definition of waterways that includes the wording 'permanently contains water', rather than 'permanently flowing'.

The threshold for drains as recommended by the property plan sub-group on 15 January is therefore:

Drains greater than one metre in width and deeper than 30cm which permanently contain water.

As implementation and extension staff have advised that any rule on farm drains would best sit as a separate rule, farm drains have not been included in the draft rule below but will be developed as a separate rule. If CSG wish to pursue this rule. seeking specific input from staff involved in managing drainage schemes would be advisable.

6 Draft livestock exclusion rule

The guidance from CSG contained in Table 1 AND the advice from implementation and enforcement staff contained Table 2 have been interpreted by policy staff and used to re-craft another version of the livestock exclusion rule, see Text box 1. This can be used as a basis for CSG when deciding what to take to the focused sector engagement in February 2016.

NOTE: **Bold** indicates the word is defined

Highlighted indicates the component is based on advice from implementation and enforcement staff and differs from CSG21 guidance.

Text Box 1: Draft livestock exclusion rule

Livestock access onto the bed of a lake, wetland or river (including a stream)

The access of dairy cattle, beef meat cattle, horses, domestic farmed deer or domestic farmed pigs onto the **bed** of a **lake, wetland or river (including a stream)** in the Waikato and Waipa River catchments past the dates specified in Table X is a **prohibited activity**:

Table X: Dates by which livestock must be restricted access onto the bed of a lake, wetland or river (including a stream)

Livestock type	Date
Dairy cattle	1 July 2017/18/19/20 (TBC)
Beef meat cattle, domestic farmed deer, domestic farmed pigs, horse	1 July 2025

In the context of this rule access means the ability for livestock to enter onto the bed of a **lake, wetland or river (including a stream)** and includes passing across the **bed** of a **river (including a stream)** without provision for **livestock crossing** in place.

Definitions

RMA definition

Bed means,—

(a) in relation to any river—

(i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks:

(ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and

(b) in relation to any lake, except a lake controlled by artificial means,—

(i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the lake cover at its annual highest level without exceeding its margin:

(ii) in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and

(c) in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and

(d) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea

Lake means a body of fresh water which is entirely or nearly surrounded by land.

River means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).

Wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

New definition

A **livestock crossing** is a structure in, on or over the bed of a river, for the purpose of enabling farmed animals to cross that river bed. Examples of livestock crossings include a bridge, culvert or constructed ford.

NOTE: This draft rule has not yet been reviewed from a legal perspective

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Appendix 1: Brief history of development of livestock exclusion rule and references to look at for further detail

References

Facilitation session notes CSG21. 17-18 December 2015. Document #3666721

Land and Water Forum 2015. The Fourth Report of the Land and Water Forum. Land and Water Trust. Wellington, New Zealand.

Waikato Regional Council 2015. Implementation considerations for policy design. For Information report dated 11 November 2015. Document #3608886.

Waikato Regional Council 2015. Intensive Engagement Period 2 quantitative feedback. For Information report updated 20 November 2015. Document #3615281³.

Waikato Regional Council 2015. Intensive Engagement Period 2 qualitative feedback and draft report. Agreement and Approvals. Dated 8 December 2015. Document #3603167.

Waikato Regional Council 2015. Possible catchment wide rules and how they were developed. Agreement and Approvals dated 9 October 2015. Document #3494533.

Waikato Regional Council 2015. Stock exclusion catchment wide rules. Agreement and Approvals dated 15 December 2015. Document #3633631.

Waikato Regional Council 2016. Notes from policy workstream and RUD workstream workshop on plan rules – 11 January 2016. Document #3664076.

Waikato Regional Council 2016. Overall approach and Report Back from CSG Property Plan Sub-Group 15 January 2016 workshop. Agreement and Approvals dated 20 January 2016. Document #3673247.

Workshop notes CSG18. 13-14 October 2015. Document #3577749.

Workshop notes CSG19. 23-24 November 2015. Document #3629626.

Workshop notes CSG21. 17-18 December 2015. Document #3652426.

³ Document number was incorrectly recorded in the recommendations of the report as #3615251.

Appendix 1: Brief history of development of livestock exclusion rule and references to look at for further detail

<p>1. CSG general discussion on catchment wide rules</p>	<p>CSG12 to 18 June to October 2015</p>
<p>2. Staff (policy and RUD input) drafted report on catchment wide rules, including draft prohibited activity rule for livestock exclusion and CSG provided feedback, and decided to consult on this rule</p> <p><i>Waikato Regional Council 2015. Possible catchment wide rules and how they were developed. Agreement and Approvals dated 9 October 2015. Document #3494533.</i></p> <p><i>Workshop notes CSG18. 13-14 October 2015. Document #3577749</i></p>	<p>CSG18 13-14 October 2015</p>
<p>3. Implementation staff provided comment on the catchment wide rules and property plan option</p> <p><i>Waikato Regional Council 2015. Implementation considerations for policy design. For Information report dated 11 November 2015. Document #3608886.</i></p>	<p>CSG19 23-24 November 2015</p>
<p>4. CSG received feedback from engagement period, which included a question on livestock exclusion</p> <p><i>Waikato Regional Council 2015. Intensive Engagement Period 2 quantitative feedback. For Information report updated 20 November 2015. Document #3615281.⁴</i></p> <p><i>Waikato Regional Council 2015. Intensive Engagement Period 2 qualitative feedback and draft report. Agreement and Approvals. Dated 8 December 2015. Document #3603167.</i></p> <p><i>Workshop notes CSG19. 23-24 November 2015. Document #3629626.</i></p>	<p>CSG19 and 20 23-24 November and 9-10 December 2015</p>
<p>5. Report summarising above process, as well as other councils approaches and LAWF recommendations on livestock exclusion prepared for CSG and got their feedback on components of the rule</p> <p><i>Waikato Regional Council 2015. Stock exclusion catchment wide rule. Agreement and Approvals report dated 15 December 2015. Document #3633631.</i></p> <p><i>Workshop notes CSG21. 17-18 December 2015. Document #3652426</i></p>	<p>CSG21 17-18 December 2015</p>
<p>6. Policy staff re-crafted draft rule based on feedback from CSG 21, and met with implementation staff for their perspective.</p>	<p>11 January 2016</p>

⁴ Document number was incorrectly recorded in the recommendations of the report as #3615251.