

Report to the Collaborative Stakeholder Group – for Information

File No: 23 10 12

Date: 7 August 2014

To: Collaborative Stakeholder Group

From: Interim Chairperson – Bill Wasley

Subject: Response to consent applications prior to public notification of Waikato Regional Plan Change 1 Waikato and Waipa River catchments

Section: For Information

1 Purpose

The purpose of this report is to assist the Collaborative Stakeholder Group (CSG) understand how Waikato Regional Council resource consent officers will approach applications for resource consents between now and public notification of Waikato Regional Plan Change 1 Waikato and Waipa River catchments.

Recommendations:

1. That the report “Response to consent applications prior to public notification of Waikato Regional Plan Change 1 Waikato and Waipa River catchments” (Doc 3123622 dated 7 August 2014) be received for information.

That the Collaborative Stakeholder Group:

2. Discuss this report and receive a further update report from staff at the mid September Collaborative Stakeholder Group workshop.

2 Background

This report is in response to a question raised at CSG workshop 3. The question and response from WRC staff, that is contained in the meeting notes, is reproduced below:

Will WRC make sure they align any new consent applications with the policy the collaborative stakeholder group is developing? Are they publicly notified? Need reassurance that people don't see this as opportunity to get in before the plan change.

Until the new part of the Regional Plan is publically notified as Plan Change 1 Waikato and Waipa Catchments, WRC has to rely solely on the rules in the existing Regional Plan.

The time between developing and public notification of a plan change is a time of uncertainty for people, since they can see something will change, but it is not official and can't be used by the council in formal processes like resource consent applications. However, the Vision and Strategy (V & S) has been put in the overall guiding document (no rules) which is the Regional Policy Statement (RPS). So looking at the V&S becomes part of the consent application process.

WRC can't make sweeping assurances until we see particulars. WRC are aware of this issue.

The remainder of this report expands on the staff response above, by giving a general overview of planning considerations and overview of an early 2014 resource consent application made by Wairakei Pastoral Limited. A further report to the September CSG workshop 6 will provide an update to CSG on the WRC response to Wairakei Pastoral Limited. Appendix 1 lists some of the relevant provisions for WRC when considering an application.

3 WRC consideration of activities resulting in adverse effects of diffuse discharges

The Vision and Strategy is of paramount importance to the Healthy Rivers policy development process. The Collaborative Stakeholder Group will need to grapple with how it can be implemented through new objectives, policies and rules in Waikato Regional Plan Change 1. When it comes to implementing existing rules in the Waikato Regional Plan, consideration of the Vision and Strategy becomes part of the consent application process.

The existing Waikato Regional Plan is the starting point for discussion of consent applications because draft policy provisions have no legal effect and Council cannot give any weight to them in making decisions on consents. It contains permitted activities that cover some land use and land activities that result in diffuse discharges to land where they may enter water. Permitted activities can be carried out without the resource user needing to contact WRC, as long as conditions are complied with. Permitted activities include, but are not limited to: animal effluent from animals kept in confined spaces (dairy shed, chicken shed, piggeries); application of fertiliser; ofal holes; and disturbance of soil within two metres of water bodies.

While the Waikato Regional Plan had over 80 permitted activity rules when it was notified, it was silent about some activities that result in diffuse discharges to land where they may enter water. This was also the case for other regional plans, despite the presumption in section 15(1)(b) of the RMA that discharges to water or to land where they may enter water, either require a resource consent or need to be explicitly permitted in a plan. The approach taken by WRC since mid 1990s has been policy reviews that result in changes to the Plan such as Variation 5 (Lake Taupo catchment) and the forthcoming Plan Change 1 (Waikato and Waipa River Catchments).

The decision tree below sets out the key decision points for council planners, including resource consent officers, when resource users undertake activities that result in discharges of contaminants to water or to land where they may affect water.

Figure 1: Key decision points for activities that result in adverse effects of diffuse discharges of contaminants to water or to land where they may affect water

Are there rules in the Waikato Regional Plan that cover the activity of concern?

Yes

No

Q1: Does the resource user believe they can meet the conditions of the permitted activity?

Is the council aware there are significant adverse effect of an activity occurring?¹

Yes

No

Yes

No

Activity goes ahead and all conditions complied with

- e.g. dairy shed effluent applied to land at rates of 150kgN/ha/y or less
- e.g. If nitrogen fertiliser is being applied at rates greater than 60kgN/ha/y, a nutrient plan is supplied to the council

Q2: Is there a rule that covers the specific discharge activity?

Yes

No

Are the council willing and able to collect sufficient info and take enforcement action under RMA S17?

Activity goes ahead until PC1 is notified.
(New rules may include permitted activities or consent requirements. Rules have legal effect when plan is notified.).

General discharge rule 3.5.4.5 applies. Go to Q3.

Q3: Is the activity within the area covered by the three co-management River Acts?

Yes

No

Yes

No

In granting or declining the consent, considerations to apply are councils RMA plans and s104 and Part II of RMA and NPSFM 2014.

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Must have regard to V&S and implement process set out in Joint Management Agreement with iwi authority

Consent may be granted for any term up to a max of 35 years, with conditions, or declined

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Action to address any adverse effect proven to have been occurring

Activity goes ahead until PC1 notified

¹ Activities may include diffuse discharges of contaminant to water or where it may enter water not covered by rules in WRP e.g. nitrogen leaching from stock grazing, overland flow of sediment, phosphorus, microbes to water from disturbed/recently cultivated land.

4 Wairakei Pastoral Ltd application for resource consent

In April 2014, a resource consent application was lodged by Wairakei Pastoral Limited (WPL) specifying an overall maximum nitrogen loading cap of 5000 tonnes N/yr. In addition a term of 15 years was requested to align with the farm water consents for the site. The effective pastoral area is 18,000 hectares, primarily made up of milking platform, with smaller areas in dairy support and cut and carry lucerne crop.

Although deemed permitted activities under the Regional Plan, discretionary consent was applied for, because WPL said it could not comply with conditions of permitted activity rule 3.9.4.11 Fertiliser application.

As of 30 July 2014 WRC resource consent officers:

- Have undertaken a series of Overseer nutrient modelling scenarios using information supplied by WPL, with the report provided to the applicant.
- Are awaiting further information requested from WPL.
- No decision has been made on whether the resource consent application will be notified. WRC resource consent officers have delegated authority to make a decision on public notification and follow the process set out in the RMA where they must consider effects on any person(s) and effects on the environment.

As noted above, staff must process the application within the framework of existing rules. Note however that when the effects of the application are considered by the consent authority it may:

- 1) Choose to impose conditions or a time period on the consent that avoids, remedies or mitigates any significant adverse effects.
- 2) Under the RMA, s128(1)(b) enables the Council to review the conditions of a consent when a regional plan has become operative which sets limits or standards relating to water quality and the Council considers it appropriate to review the conditions in order to enable those standards to be met.

5 Summary

The Vision and Strategy is of paramount importance to the Healthy Rivers Project development of new planning provisions. When it comes to implementing existing rules in the Waikato Regional Plan, consideration of the Vision and Strategy becomes part of the consent application process.

Prior to public notification of Proposed Plan Change 1, the existing Waikato Regional Plan is the starting point for discussion of consent applications because draft policy provisions have no legal effect and Council cannot give any weight to them in making decisions on consents.

A resource user may choose to apply for a resource consent under the general discharge rule. Waikato Regional Council resource consent officers will follow an RMA prescribed process for applications for resource consents between now and public notification of Waikato Regional Plan Change 1 Waikato and Waipa River catchments. The application will go through stages where all relevant information has been asked for and received, affected parties notified and public submissions received (if the application had been notified). At that point the consent authority makes a decision after consideration of all relevant matters in the NPS-FM, Vision and Strategy, WRC plans and policy statement and RMA.

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Policy and Transport Group

Bill Wasley
Independent Chairperson, Collaborative
Stakeholder Group

Appendix 1 Relevant planning provisions

The provisions below must be considered in granting or declining a resource consent application for discharge to water or to land where it may enter water.

Vision and Strategy for Waikato River

The Waikato-Tainui Raupatu claims (Waikato River) Settlement Act 2010 states in section 5 (1) The vision and strategy is intended by Parliament to be the primary direction-setting document for the Waikato Rivers and activities within its catchment affecting the Waikato River. In Section 12(1) it states the vision and strategy prevails over any inconsistent provision in a) a national policy statement; and b) a New Zealand coastal policy statement.

The Vision and Strategy is contained in all three co-management River Acts; Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Nga Wai o Maniapoto (Waipa River) Act 2012 and Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

Regional Plans must give effect to the Vision and Strategy.

In granting or declining a consent, WRC has a duty to have particular regard to the Vision and Strategy (Section 17 of Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010).

National Policy Statement-Freshwater Management 2014

All water quality provisions of the NPS-FM are relevant to the development of Plan Change 1. If there are provisions in the NPS-FM that are inconsistent with the Vision and Strategy, the Vision and Strategy prevails (Waikato-Tainui Act s12(1)).

Policy A4 of NPS-FM

This policy is inserted in the Waikato Regional Plan and is intended to guide applications for discharges in the transition between the NPS-FM 2011 taking effect, and Regional Council review of plans under NPS-FM.

Proposed Regional Policy Statement (decisions version)

The RPS must be consistent with the Vision and Strategy.

The Proposed RPS contains objectives, policies and methods that guide resource use in the area covered by the three co-management River Acts.

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3.9.4.11 Permitted Activity Rule – Fertiliser Application

The discharge of fertiliser* into air and onto or into land outside the Lake Taupo Catchment is a **permitted activity** subject to the following conditions:

- a. The discharge shall not result in any objectionable odour or particulate matter beyond the subject property boundary.
- b. The discharge does not result in any avoidable direct application of fertiliser to any water body.
- c. Where the fertiliser is being used in other than domestic gardening situations the fertiliser must be applied in accordance with the NZ Fertiliser Manufacturers Research Association, 1998 (updated 2002): Code of Practice for Fertiliser Use.

- d. A nutrient management plan of the type specified in Table 3-10 must be used to plan fertiliser application where nitrogen fertiliser is being applied at rates greater than 60 kg/N/ha/year.
- e. The contents of the nutrient management plan required by condition d) must be made available to the Waikato Regional Council upon request.
- f. A nutrient management plan shall be provided to Waikato Regional Council on request in accordance with condition d) where fertiliser is to be applied to an area of land that has also had farm animal effluent applied to it within the preceding 12 months.

Table 3.10 Nutrient Management Requirements by Land Use Type

Land Use Type	Nutrient Management Plan Requirements
All Land Uses applying more than 60Kg N/ha/yr	<p>A nutrient management plan must be prepared that, as a minimum records the following information for at least nitrogen (N) and phosphate (P) (in units of kg of N and P per hectare per year) :</p> <ul style="list-style-type: none"> • Inputs from fertiliser. • Inputs from other sources such as manures, green crops and soil mineralization. • Outputs in product. • Results of soil testing for levels of available N and P. • Documentation of consideration given to climatic and soil conditions for the life of the crop to account for the effects of rainfall and irrigation on the potential for N and P leaching through the soil in to ground and surface water. • Practices that will be implemented to reduce nutrient and sediment losses from the property and to avoid, remedy or mitigate adverse effects on the environment.
Pastoral	The nutrient management plan specified above must be developed based on the outputs of either Overseer (Agresearch) or any other nutrient management planning tool that meets the criteria set out in the fifth advisory note below.
Commercial Vegetable and Fruit Production, Arable/Mixed Cropping and Livestock or any other land use not otherwise captured in this table	From 1 January 2011, the nutrient management plan specified above must be developed based on the outputs of any nutrient management planning tool that meets the criteria set out in the fifth advisory note below.

Advisory Notes:

- The discharge of fertiliser into air and onto or into land that does not comply with Rule 3.9.4.11 is a discretionary activity in accordance with Rule 3.5.4.5.
- Application of fertiliser should follow the good practice guide on fertiliser use in Section 3.9.7 and any other relevant industry nutrient management tools, including “Doing it Right” (the Franklin Sustainability Project, 2002).
- The processes for determining the objectionable effects of odour or particulate matter beyond the property boundary are set out in Chapter 6.4 of this Plan.
- This rule does not specify a nutrient leaching rate for the model. It is Waikato Regional Council’s intention to survey modelled leaching rates and if necessary develop rules that specify nutrient leaching rates for sensitive locations in accordance with Method 3.9.4.8.
- In order to comply with the requirements of this Rule Nutrient Management Planning tools other than Overseer and SPASMO must:

- a. Be a Crown Research Institute, University or Industry developed model that has successfully completed commercial trials commensurate with climatic, terrain and soil conditions expected to be encountered in the Waikato Region.
 - b. Be able to predict annual, seasonal or crop nutrient losses at either a paddock or total crop area scale with a margin of error no more than 30%.
 - c. Have been calibrated against current versions of either Overseer or SPASMO, or versions that are no more than 3 years old, and any departures from those models when using identical data sets documented and explained.
 - d. Have product maintenance and support currently available as of the date of use or guaranteed for a period of one year.
- A register of nutrient management planning tools that meet the criteria set out in the above advisory note is maintained by Waikato Regional Council. If by 2011 models that meet these criteria have not been developed for the subject crop or land use, a model based on the crop or land use with the most similar nutrient leaching behaviour will be acceptable.