

Memo

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To: Project Manager – Healthy Rivers Wai Ora

From: Jacqui Henry

Subject: **Development of discussions amongst the Collaborative Stakeholder Group regarding Māori land**

The purpose of this memo is to provide a record of key discussions and decisions regarding the development of under developed Māori owned land in respect of the Healthy Rivers Wai Ora Plan Change. The first part of this report discusses the process of development of the Policy Selection Criteria with regard to Treaty settlement land and inclusion of multiple Māori owned land. The second part of the report describes the role of the Māori Land Sub-group and key recommendations made by this group to the wider CSG.

Policy Selection Criteria

The purpose of developing Policy Selection Criteria was for the CSG to decide what criteria should be applied when selecting from different policy options for a plan change for the Waikato and Waipā catchments¹. At CSG6 (15/16 September 2014) CSG developed draft criteria which was clustered into groups. One of the clustered groups included fairness and equity¹:

Is accepted as fair and equitable. Does the policy:

- Avoid inequitable allocation of rights e.g. 'windfall gains' for some, loss of flexibility of use of land returned under Treaty settlement

At the CSG's first large stakeholder forum 23rd October 2014 feedback was sought on their draft Policy Selection Criteria². This feedback together with further discussion at CSG7 (30/31 October 2014) the criteria was further refined to take to the Healthy Rivers Wai Ora (HRWO) Committee. Refinement included a change in cluster group as below³:

Allow for intergenerational flexibility. Does the policy:

- Provide flexibility of future land use (including the return of treaty settlements land)?

The draft Policy Selection Criteria (PSC) was presented to the HRWO Committee for the first time on 17 December 2014⁴. Between then and August 2015 the PSC had various iterations with further feedback received from River Iwi staff, CSG members and HRWO committee members^{5,6,7}. Though the PSC was supported in principle by the HRWO committee meeting on 19 June 2016⁸ the committee provided further feedback for the CSG to consider and bring back. The PSC was therefore revisited on many occasions by CSG, TRH and HRWO committee meetings during development until the final draft presented to the HRWO committee

¹ CSG6 Workshop notes for 15-16 September 2014 – Approved. Doc#3177101

² Agenda pack for the Healthy Rivers Wai Ora 2014 Large Stakeholder Forum. Doc#3190151

³ CSG7 Workshop notes for 30-31 October 2014 – Approved. Doc#3208894

⁴ Minutes of the Healthy Rivers Wai Ora Committee meeting held on 17 December 2014 – Doc#3242447

⁵ CSG11 Workshop notes for 23-24 April 2015 – Approved. Doc#3359918

⁶ CSG12 Workshop notes for 4-5 June 2015 – Approved. Doc#3419983

⁷ CSG13 Workshop notes for 2-3 July 2015 – Approved. Doc#3439320

⁸ Report to Healthy Rivers Wai Ora Committee – Policy Selection Criteria 19 June 2015. Doc#3405797

on 14 August 2015⁹. The PSC grouping in respect of Māori owned land and Treaty settlement land is shown below¹⁰:

Allows for flexibility and intergenerational land use

Does the policy:

- foster innovation?
- encourage positive actions being taken?
- allow for change and review as new information and issues arise?
- provide flexibility of future land use (including Treaty settlements land and multiple Māori owned land)?
- take account of complexity and difference between farming systems and farm enterprises?

Also of relevance is the following grouping in the PSC¹⁰:

Provides for aspirations of River iwi

Does the policy:

- provide for them to retain and use their taonga in accordance with their tikanga and kawa?
- give effect to their environmental, economic, cultural and social relationships with land and water?

Māori Land Sub-Group

In CSG workshops discussions were held regarding the allocation of responsibility for contaminant reduction. Part of these discussions included flexibility for under developed Māori land, defining areas of treaty settlement land and multiple Māori owned land within the catchment that would be affected, and striving to achieve the Vision and Strategy^{11, 12, 13, 14}. A legal opinion was also sought in-house to think about allocating an additional portion of development right in a future plan change and the legalities around that¹⁵.

At a CSG Focus Day on 26 February 2016 it was decided that a sub-group be formed to investigate options so that the plan change would not impose a further impediment to the development of under developed Māori owned land¹⁶. The Māori land sub-group formed comprised of members of the CSG with contributions and support from River Iwi staff, the River Iwi technical advisor, WRC staff, and the CSG's chair and independent facilitator¹⁷. The sub-group held a total of six meetings as outlined below in Table 1.

For each of the sub-group meetings held an update was provided to CSG. The first update (for meetings 1 and 2) was provided at CSG25 on 4 April 2016¹⁷. At this workshop the Māori land sub-group made recommendations in which the CSG decided¹⁸:

- that the land which this policy applies to is Te Ture Whenua Māori land and settlement lands, where tangata whenua have a relationship with their land as at date of notification;
- intent of policy (10 years and in the future) - to develop counterbalancing policy to allow for flexibility for land that has not been able to develop for legal/historical reasons/impediments (tangata whenua relationships), while signalling the allocation regime to come.

⁹ Report to Healthy Rivers Wai Ora Committee – Policy Selection Criteria 14 August 2015. Doc#3453993

¹⁰ The Collaborative Stakeholder Group's policy selection criteria – October 2015

<http://www.waikatoregion.govt.nz/PageFiles/36829/Collaborative%20Stakeholder%20Group%20policy%20selection%20criteria.pdf>

¹¹ Agenda CSG18 13-14 October 2015. Doc#3575620

¹² CSG19 Workshop notes for 23-24 November 2015 - Approved. Doc#3629626

¹³ CSG20 Workshop notes for 9-10 December 2015 – Approved. Doc#3638362

¹⁴ CSG21 Workshop notes for 17-18 December 2015 – Approved. Doc#3652426

¹⁵ CSG22 Workshop notes for 28-29 January 2016 – Approved. Doc#3689206

¹⁶ CSG Focus session workshop notes 260216 – Approved. Doc#3727426

¹⁷ Report to CSG – Māori Land Subgroup Workshop Update from meetings 1 and 2. Doc#3751614

¹⁸ CSG25 Workshop notes for 4-5 April 2016 – Approved. Doc#3764198

- the range of scenarios to model as part of policy simulations

The second update (for meetings 3 and 4) was provided at CSG26¹⁹ on 28 April 2016. Further recommendations were discussed with the CSG where it was decided that²⁰:

- The general land use change rule, aka Rule 2a, and any new rule for Māori land use change, has an expiry date.
- The policy and methods around the principles of future allocation and work required to be undertaken between now and allocation, are important and need to be a clear theme of Plan Change 1, and the principles for future allocation need to be clearly expressed.
- Plan Change 1 should contain an objective and a policy reflecting the intent discussed by the sub-group.

The focus for meetings 5 and 6 was on the Māori land scenario modelling that TLG had undertaken. At CSG28²¹ on 30 May 2016 a verbal update was given to the CSG in respect of what was modelled and the results as reported by TLG. Given what was presented the CSG were confident to proceed with a Māori land policy, however (along with an objective and policy) it was undecided as to whether to pursue a separate rule or refer to the existing non-complying Rule 2a. Legal advice was sought as to which option would be more legally defensible. At CSG29²² in accordance with legal advice a report was presented to CSG recommending:

- A non-complying activity rule for all land use change (Rule 2a), and an objective (Objective 5) and a policy (Policy 16) providing guidance on the flexibility and land use change of tangata whenua ancestral land.

CSG approved this recommendation²³ in which the following objective and policies have been included in Plan Change 1:

Objective 5: Mana Tangata – protecting and restoring tangata whenua values

Tangata whenua values are integrated into the co-management of the rivers and other water bodies within the catchment such that:

- a) tangata whenua have the ability to
 - i. manage their own lands and resources, by exercising mana whakahaere, for the benefit of their people; and
 - ii. actively sustain a relationship with ancestral land; and
- b) new impediments to the flexibility of the use of ancestral lands are minimised; and
- c) tangata whenua connection with the rivers and other water bodies in the catchment is strengthened; and
- d) improvement in the rivers' water quality and the exercise of kaitiakitanga increases the spiritual and physical wellbeing of iwi and their tribal and cultural identity.

Policy 6: Restricting land use change

Except as provided for in Policy 16, land use change applications that demonstrate an increase in discharge levels of nitrogen, phosphorus, sediment and microbial pathogens would generally not be granted.

Land use change applications that demonstrate clear and enduring decreases from existing use discharge levels of nitrogen, phosphorus, sediment and microbial pathogens would generally be granted.

¹⁹ Report to CSG – Māori Land Subgroup Workshop Update from meetings 3 and 4. Doc#3771967

²⁰ CSG26 Workshop notes for 28-29 April 2016 – Approved. Doc#6287211

²¹ CSG28 Workshop notes for 30 and 31 May 2016 – Approved. Doc#8724890

²² Collaborative Stakeholder Workshop 29 Agenda – 7 June 2016. Doc#6548372

²³ CSG29 Workshop notes for 7 June 2016 – Approved. Doc#8408659

Policy 16: Flexibility for development of land returned under Te Tiriti o Waitangi settlements and multiple owned Māori land

For the purposes of considering land use change applications under Rule [2a], land use change that provides flexibility for development of tangata whenua ancestral lands shall be managed in a way that recognises and provides for:

- a) The relationship of tangata whenua with their ancestral lands; and
- b) The exercise of kaitiakitanga; and
- c) The creation of positive economic, social and cultural benefits for tangata whenua now and into the future;

Taking into account:

- i. Best practice land management actions for nitrogen, phosphorus, sediment and microbial pathogens for the new type of land use; and
- ii. The suitability of the land for development into a new use, reflecting the principles for future allocation as contained in Policy 7, including the risk of contaminant loss from that land and the sensitivity of the receiving water body, and
- iii. The short term targets to be achieved in Objective 3.

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Table 1: Māori land sub-group meetings

Meeting	Date	Purpose of meeting	Documents
1.	15 March 2016	<p>The sub-group confirming:</p> <ul style="list-style-type: none"> • Land that will be included <i>That the land which this policy applies to is Te Ture Whenua Māori land and settlement lands</i> • Intent of policy (10 years and in the future) <i>To develop counterbalancing policy to allow for flexibility for land that has not been able to develop for legal/historical reasons/impediments (tangata whenua relationships), while signalling the allocation regime to come.</i> • Legal questions 	<ul style="list-style-type: none"> • River Iwi advisor 2016. Provision for the development of Māori land within the framework of Te Ture Whaimana o Te Awa o Waikato and Healthy Rivers: Plan for Change/Wai Ora: He Rautaki Whakapaipai. Table at Collaborative Stakeholder Group Focus Day session 26 February 2016. Doc #3709793 • Waikato Regional Council 2015. Extent of Māori owned land within the Healthy Rivers sub-catchments and current land-use categories. Report to the Collaborative Stakeholder Group - for Information, dated 17 November 2015. Doc#3609413 • Waikato Regional Council 2016. Defining Māori Land, Report to the Collaborative Stakeholder Group - for Information, dated 20 January 2016. Doc#3652739. • Waikato Regional Council 2016. Resource for Māori land sub-group: Relevant policy and legislation. For Māori land sub-group 15 March 2016. Doc#3718075 • Waikato Regional Council 2016. Sections of RMA - Functions of council, purpose of Regional Plans and matters to be considered by regional councils when making plans. For Māori land sub-group - tabled on the day 15 March 2016. Doc#3723111 • Māori land sub-group meeting notes 15 March 2015. Doc#3747040
2.	1 April 2016	<ul style="list-style-type: none"> • When development might occur (harvest schedule) • State of current data on Māori land • Scenario range of how much land might develop, when and where (links to future allocation) 	<ul style="list-style-type: none"> • Waikato Regional Council 2016. Policy options for discussion by Māori land sub-group. For Māori land sub-group 11 April 2016. Dated 30 March. Doc#3724784

			<ul style="list-style-type: none"> • Spreadsheet from Vicki that Yvonne presented Doc#3751348 • Māori land sub-group meeting notes 1 April 2015. Doc#3757058 • Waikato Regional Council 2016. Māori land sub-group - Update from meetings 1 and 2. Report to the Collaborative Stakeholder Group - for Agreement and Approval, dated 29 March 2016. Doc#3751614
3.	11 April 2016	<ul style="list-style-type: none"> • Discuss legal input on policy options and work on draft wording for the Plan Change 	<ul style="list-style-type: none"> • Waikato Regional Council 2016. Drafting outcomes, objectives and policies. For Māori land sub-group 11 April 2016. Dated 7 April. Doc#3753373 • Waikato Regional Council 2016. Cover memo for legal opinion. For Maori land sub-group 11 April 2016. Dated 7 April 2016. Doc#3761666 • Simpson Grierson 2016. Plan Change 1 - Initial comment on proposed provisions relating to the development of Maori land. Privileged and confidential. Dated 8 April 2016. Doc#3764674 • Māori land sub-group meeting notes 11 April 2015. Doc#3764581
4.	19 April 2016	<ul style="list-style-type: none"> • Update on scenario for policy simulation • New wording of provisions and options for activity class • Confirm recommendations to CSG 	<ul style="list-style-type: none"> • Waikato Regional Council 2016. New wording of provisions and options for activity class. For Māori land sub-group 19 April 2016. Dated 15 April. Doc#3767585 • Māori land sub-group meeting notes 19 April 2015. Doc#3773495 • Waikato Regional Council 2016. Maori land sub-group - Update from meetings 3 and 4. Report to the

			Collaborative Stakeholder Group - for Agreement and Approval, dated 21 April 2016. Doc#3771967
5.	10 May 2016	<p>Responding to TLG 'heads up' and preparing for modelling:</p> <ul style="list-style-type: none"> • Clarifying meaning of 'median N' • Do we want to model a lower rate of change? If so what? • What policy could be written to constrain the rate of change? • Dates - term of rule 2 	<ul style="list-style-type: none"> • Assessing Land Development Potential – MMOL and CNI. Doc#8412836. • Māori land sub-group meeting no 5 – 10 May 2016. Doc#6174751
6.	27 May 2016	<ul style="list-style-type: none"> • Māori land scenario modelling results • Implications of results and proposals to go forward to CSG 	<ul style="list-style-type: none"> • TLG Draft report - Simulation of the proposed policy mix for the Healthy Rivers Wai Ora process. 13 July 2016. Doc#6551310 • Māori land sub-group meeting no 6 – 27 May 2016. Doc#6514753