

Report to the Collaborative Stakeholder Group – for Agreement and Approval

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To: Collaborative Stakeholder Group
From: CSG Independent Chairperson – Bill Wasley
Subject: Property Management Plan rules
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 an outline of what the Property Management Plan (PMP) rules might look like and highlight considerations and questions as the CSG continue to refine this policy option.

Recommendation:

1. That the report [Property Management Plan rules] (Doc #3625488 dated 2 December 2015) be received, and
2. That the Collaborative Stakeholder Group confirm:
 - a. That this exercise highlighted some questions that need to be considered by the CSG, such as rule thresholds, linking property management plan to water quality outcomes and if reductions are required, the approach to achieve these reductions.
 - b. That the CSG work through these questions and make decisions so policy staff can continue to develop this policy approach.
 - c. This process of looking at example rules allows the CSG to start to incorporate the work the CSG and staff has done to date developing the CSG property plan policy idea (e.g. the requirements detailed in reports and presentations such as implementation considerations) into rule development.

2 Background

The CSG has received a number of reports¹ on the overall concept of a compulsory property plan policy option e.g. key components, consideration about implementation and elements needed for community and council confidences in this approach. This report outlines examples of what the rule might look like, and the various rule activity classes. For the purpose of this report the example rules have focused on a generic approach rather than differentiating the various approaches outlined in previous reports. These include whether it is an industry supported approach (industry provide template and workshops, farmers develop plan and get it certified), an industry scheme approach (certified plan developed, plan registered, and audited by industry and council) or a Council led approach.

3 Activity Status

Sections 77A and 87A of the RMA describe the different types of activities that may be included in plans. These classes of activities are described in Table 1 or refer to Appendix 5 for details in the RMA.

Table 1. Overview of activity status

Activity status	Consent
Permitted	No resource consent is required. Must comply with conditions in plan.
Controlled	Requires resources consent. Must be granted. Must comply with standards and terms in plan. Can only consider specific matters over which control reserved and may only impose consent conditions relevant to those matters.
Restricted discretionary	Requires resources consent. May be granted. Can only consider specific matters over which discretion restricted and may only impose consent conditions relevant to those matters.
Discretionary	Requires resources consent. May be granted. May impose consent conditions. Full discretion.
Non-complying	Requires resources consent. May be granted, subject to gateway test. May impose consent conditions. Full discretion.
Prohibited	Consent cannot be applied for.

3.1 Permitted activity versus a controlled activity

In general for both a permitted activity and a controlled activity:

- Landholders have to comply with any requirements, conditions, and permissions specified for the activity.
- Landholders are assessed that they are meeting the Waikato Regional Plan rule requirements.
- Enforcement action can be taken for both a permitted activity and those that require consents.

Some of the main differences between a permitted activity and a controlled activity are:

- Direct cost recovery mechanisms provided for in the RMA for consent and monitoring costs versus a rate² to cover permitted activity monitoring costs that applies to all

¹ Workshop 14 (10-11 August 2015) Exploring farm plans as a policy options including industry supported farm plan and regulatory backstop. DM#3454905. Workshop 18 (13-14 October 2015) Options for Tailored Property plans. DM#3563987.

² Note in order to assess compliance with rules for activities that can be carried out without the need for a resources consent the permitted activity monitoring rate applies on all properties 2 hectares or greater in land area.

properties at or over 2ha. However, this rate can possibly be changed or a new rate established to meet the needs of implementing Plan Change 1.

- Explicit consideration of individual property's circumstances by WRC before granting a consent.
- Possibly higher transaction costs with a controlled activity. For example holding a consent can attract an annual charge, obtaining a consent potentially opens up to a public process.

Some of the perceived differences between permitted activity and those activities that are required to get a resource consent:

- Community confidence in outcomes may be less with a permitted activity rule (perception that this will be monitored less than a consent),
- Varying perception about the level of involvement by council in landholders' business decisions,
- Depending on resource consent timeframe, those with a consent (compared to those without a consent) may have longer before they have to change in response to any new rules³.

3.2 Permitted activity versus a controlled activity similarities in the property plan approach

Of the policy options proposed for property management plans in this report the permitted activity⁴ and controlled activity have similar requirements, that is:

1. Landholders must have a property management plan (PMP) with actions and timeframes.
2. PMP must be certified (information and actions are suitable).
3. Submit PMP to council (and industry).
4. Do actions in PMP (use land in compliance with PMP)
5. Actions are monitored by WRC (and audited by industry).

There would be assessment/s that landholders are meeting the Waikato Regional Plan rule requirements – (e.g. landholders have a suitable plan, are undertaking the activities required and some auditing/monitoring).

4 Property Management Plan considerations

4.1 Threshold/timeframe

The CSG will need to consider and make decisions on the following matters regarding thresholds and timeframes:

- Refine the criteria that trigger the need for a property management plan – in current example there is a property size threshold of 4ha (either 4ha and above, or those exceeding 4ha). CSG could consider what might be other criteria to define who has to have a plan, such as risk (e.g. due to the activity proximity to waterways), priority (e.g. priority areas on the “heat maps”), all land use or just pastoral land use.
- There would be a PA rule that covers landholders that do not meet the threshold of the activities requiring a property plan i.e. they are below the threshold for needing to

³ Bearing in mind review clauses, and how often plans are required to be reviewed

⁴ Any permitted activity rule/s will fall within s70 RMA which expressly prohibits regional councils from including permitted activity rule that allows discharges of contaminants unless the regional council is satisfied that certain effects are unlikely to arise in the water after reasonable mixing (refer Appendix 5). Any permitted activity rule would first need to satisfy s70 RMA.

prepare a property management plan, but still need to be expressly allowed in the plan by a rule⁵.

- If the idea is to have a staged roll out of the PMP rule, then the rule would specify different dates by which landholders are required to have a property management plan.

4.2 Scope, triggers for plan amendment or update

The CSG will need to consider and make decisions on the following matters regarding scope and triggers for plan amendment or update:

- What is the level of detail required, and how much change in behaviour is to be achieved with the property plans e.g. what are the “nice to do” items in the property plan and the “must do” items. What will be the mechanism by which reductions are allocated and how will this link to catchment target/s?
- Under what circumstances and how often would a comprehensive review of the property management plan be required, and what would prompt a property management plan amendment or update? This might involve specifying those changes that would increase discharges, depending on if the rule is lenient enough to allow for increases, temporary or otherwise.
- If increases in discharges are a trigger for a property management plan update, what measurement mechanism would be used to determine that trigger point (e.g. Overseer modelled increase in Nitrogen). How will PMP updates be linked with the monitoring and review of catchment limits and targets?
- Are there any other triggers/actions or behaviours that this approach should consider, such as new enterprises?

4.3 Overview of the examples of property plan rule

Below is a brief overview of the rule, refer to Appendix 1 and 2 for the detail of the draft rules. These are examples of a property plan requirement under a permitted activity, and a property plan requirement under a controlled activity. They are proposed as alternative approaches, rather than a hierarchy of rules with thresholds that change activity status.

Overview of example permitted activity rule

The use of land in the Waikato and Waipa River catchment:

1. Where the land is used for farming activities as at the date of notification of this rule [x July 201x]; and
2. Where the farming activities on a property/land parcel [exceeding 4ha in area/which is 4 ha or greater in area];

that may result in the discharge of [Nitrogen, Sediment, Phosphorus or microbial contaminants] to land, including where it may enter water is a permitted activity subject to the following conditions:

- Develop a PMP in accordance with *procedure for establishing and amending PMP*
- Implement mitigation action/s by date stated in PMP
- Update PMP when and why
- Must include everything in *minimum content description* (Minimum PMP content is specified, PMP must include (e.g. actions must be auditable etc)
- PMP lodged at council by date

⁵ Rules as described in this report are subject to Section 9 and section 15. Under s9 of the RMA no person may use any land in a manner that contravenes the rules in a regional plan (or proposed regional plan) unless the activity is allowed by a resource consent. If the CSG includes discharge rules these fall under Section 15 of the RMA that no person may discharge any contaminant or water into water unless allowed by a regional plan, resource consent or regulations. There are no permitted discharges into water under the RMA, the default is discretionary activity for all discharges.

- Running your farm in accordance with PMP and if not change plan using process in *procedure for establishing and amending PMP*

Note any reduction target/property limit not incorporated yet, dependent on CSG decision

Overview of example controlled activity rule

The use of land in the Waikato and Waipa River catchment:

1. Where the land is used for farming activities as at the date of notification of this rule [x July 201x]; or
2. Where the farming activities on a property [exceeding 4ha in area/which is 4 ha or greater in area];

that may result in the discharge of [Nitrogen, Sediment, Phosphorus or microbial contaminants] to land, including where it may enter water is a controlled activity, subject to the following standards and terms:

Develop a PMP by a certain date

- Develop a PMP in accordance with *procedure for establishing and amending PMP*
- Implement mitigation action/s by date stated in PMP
- Update PMP when and why
- Must include everything in *minimum content description* (Minimum PMP content is specified, PMP must include (e.g. actions must be auditable etc)
- PMP lodged at council by date
- Running your farm in accordance with PMP and if not change plan using process in *procedure for establishing and amending PMP*

Note any reduction target/property limit not incorporated yet, dependent on CSG decision

5 Conclusion

The report has provided examples of what a Property Management Plan (PMP) rule might look like. The only rules options presented here are a permitted activity and a controlled activity. They are proposed as alternative approaches, rather than a hierarchy of rules with thresholds that change activity status. The process is not yet defined (e.g. industry scheme, industry supported, and council). This report has highlighted some decisions that need to be made by the CSG, including rule thresholds (triggers), refining the rules logic, what would trigger amendment of the property management plan and the mechanism to hold land to its current level of discharge and or make reductions in discharges at property level.

This process allows the CSG to progress the requirements detailed in reports on property plans already presented to the CSG (e.g. in the report to CSG workshop 14 DM#3454905 possible components to include in the policy approach) and the session on implementation considerations at CGS19 (Implementation considerations for policy design DM#3608886).

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- Appendix 1:** Draft Permitted activity rule - PMP
Appendix 2: Draft Controlled activity rule - PMP
Appendix 3: Procedure for establishing PMP and minimum content description
Appendix 4: Definitions
Appendix 5: RMA sections - Classes of activity and rules about discharges

References

Resource Management Act 1991. Downloaded from www.NZ Legislation November. 2015.

Waikato Regional Council (2015) Exploring farm plans as a policy options including industry supported farm plan and regulatory backstop 27 July 2015 DM#3454905

Waikato Regional Council (2015) Implementation considerations for policy design. 11 November 2015 DM#3608886).

Waikato Regional Council (2015) Options for Tailored Property plans 9 October 2015 DM#3563987

Appendix 1 - Draft Permitted activity

Note content will be subject to CSG decisions as to how the reduction effort is to be allocated across landholders and the catchment.

Square bracket indicate where decisions are needed/detail is to be inserted

Table 2 Draft Permitted activity

	Rule and conditions
Permitted activity	<p>The use of land in the Waikato and Waipa River catchment:</p> <ol style="list-style-type: none"> 3. Where the land is used for farming activities as at the date of notification of this rule [x July 201x]; and 4. Where the farming activities on a property/land parcel [exceeding 4ha in area/which is 4 ha or greater in area]; <p>that may result in the discharge of [Nitrogen, Sediment, Phosphorus or microbial contaminants] to land, including where it may enter water is a permitted activity subject to the following conditions:</p> <ol style="list-style-type: none"> (a) From [date], the use of land shall be undertaken in compliance with a certified Property Management Plan prepared in accordance with the procedure described in [Procedure for the establishment of certified Property Management Plans and Minimum content description], (b) A copy of the certified Property Management Plan referred to in (a), shall be provided to the Waikato Regional Council on or before [the same date as above]; (c) The certified Property Management Plan shall be reviewed and updated if [breach of property limit/reduction target], and or significant farm system changes not detailed in existing certified Property Management Plan and those changes would increase discharges [Nitrogen, Sediment, Phosphorus or microbial contaminants] and or change in property size and or change of ownership (d) A farm plan may be amended in accordance with the procedure set out in [Procedure for the establishment of certified Property Management Plans] and the use of land shall be undertaken in compliance with the amended plan as of the date of amendment; (e) A copy of any certified Property Management Plan amended in accordance with condition (d) shall be provided to the Waikato Regional Council within 1 week of the date of amendment.

Appendix 2 - Draft Controlled Activity

Note content will be subject to CSG decisions as to how the reduction effort is to be allocated across landholders and the catchment.

Square bracket indicate where decisions are needed/detail is to be inserted.

Table 3 Draft Controlled activity

<p>Controlled Activity</p>	<p>The use of land in the Waikato and Waipa River catchment:</p> <ol style="list-style-type: none"> 3. Where the land is used for farming activities as at the date of notification of this rule [x July 201x]; or 4. Where the farming activities on a property [exceeding 4ha in area/which is 4 ha or greater in area]; <p>that may result in the discharge of [Nitrogen, Sediment, Phosphorus or microbial contaminants] to land, including where it may enter water is a controlled activity, subject to the following standards and terms:</p> <ol style="list-style-type: none"> (a) From [date], the use of land shall be undertaken in compliance with a certified Property Management Plan prepared in accordance with the procedure described in [Procedure for the establishment of certified Property Management Plans and Minimum content description], (b) A copy of the certified Property Management Plan referred to in (a), shall be provided to the Waikato Regional Council on or before [the same date as above]; (c) The certified Property Management Plan shall be reviewed and updated if [breach of property limit/reduction target], and or significant farm system changes not detailed in existing certified Property Management Plan and those changes would increase discharges and or change in property size and or change of ownership (d) A farm plan may be amended in accordance with the procedure set out in [Procedure for the establishment of certified Property Management Plans] and the use of land shall be undertaken in compliance with the amended plan as of the date of amendment; (e) A copy of any certified Property Management Plan amended in accordance with condition (d) shall be provided to the Waikato Regional Council within 1 week of the date of amendment. <p>Matters of Control</p> <p>Waikato Regional Council reserves the control over the following matters:</p> <ol style="list-style-type: none"> i. The self monitoring, record keeping and information provision and site access requirement for the holder of the resources consent to demonstrate and/or monitor compliance with the certified Property Management Plan ii. The time frame and circumstances under which the consent conditions are reviewed <p>Notification:</p> <p>Consent applications will generally be considered without notification, and without the need to obtain written approval of affected persons.</p>
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Appendix 3 - minimum content description and procedure for establishing PMP

Note the information below is a mock up of what Waikato Regional Plan might contain (needs more detail on what actions are required, as the process is still being formulated by the CSG).

The necessary content will be subject to CSG decisions as to how the reduction effort is to be allocated across landholders and the catchment.

Text box 1 minimum content description and procedure for establishing PMP

Minimum content description - certified Property Management Plan

The plan shall contain as a minimum:

1. Property or farm enterprise details
 - (a) Physical address
 - (b) Description of the ownership and name of a contact person
 - (c) Legal description of the land and farm identifier
2. A map(s) or aerial photograph at a scale that clearly shows:
 - (a) The boundaries of the property or land areas comprising the farm enterprise.
 - (b) The boundaries of the main land management units on the property or within the farm enterprise.
 - (c) The location of permanent or intermittent rivers, streams, lakes, drains, ponds or wetlands.
 - (d) The location of riparian vegetation and fences adjacent to water bodies.
 - (e) The location on all waterways etc where stock access or crossing occurs.etc
3. A list of all Waikato Regional Council resource consents held for the property or farm enterprise.
4. An assessment of the adverse effects and discharge risks associated with the farming activities and how the identified effects and risks will be managed.
5. A description of how each of the following objectives (eg water quality objective for each FMU) will, where relevant, be met:
 - Eg (a) *Nutrient management*:etc

The plan shall include for each objective in 5 above;

- (a) detail information relevant to each actions ;
 - (b) defined measurable targets that clearly set a pathway and timeframe for achievement and set out defined and auditable "pass/fail" criteria
 - (c) a description of the actions
 - (d) the records required to be kept for measuring performance and achievement of the actions in the timeframes.
6. Nutrient budgets, prepared by a suitably qualified person, using the OVERSEER® nutrient budget model, or equivalent model approved by the xxxx, for each of the identified land management units and the overall farm or farm enterprise.

Procedure for establishment and amendment of property plans

Not written yet

Appendix 4 - Definitions

Some of the things that may need defining

Definition:

Property Management Plan is a plan prepared for an individual property or farm enterprise to describe a plan for ongoing management of land (i.e. rather than purely record keeping). It is a process of planning, property design and management that records inputs and outputs and provides a list of recommended actions to be completed to address water quality issues, taking into account all relevant impacts and all sources of discharges of nitrogen, phosphorous, E.Coli and sediment. It is prepared by a person who has relevant accreditation to develop and certify plan content. The plan needs to be certified by person/s with independence and the appropriate accreditation and expertise. The plan should record the landholder's existing management practices and technologies. By signing off the plan the certifier is asserting to the fact that what is in the plan reflects what is currently occurring and that what is proposed is reasonable.

Certification: refers to the confirmation by some form of external review that the Property Plan information and actions are suitable.

Accreditation: is a specific process of certification to confirm that a person/company is competent, with adequate training to do the task.

Change in property size or change of ownership Change in farm size – e.g. additional blocks purchased or leased to become part of the farming business – or land areas sold or leased out

Farming Activities (Current WRP definition): The grazing of animals or the growing of produce, including crops, market gardens and orchard produce but not including planted production forest and ancillary grazing of animals or cropping.

Farming Enterprise (from Tukituki)

Means an aggregation of parcels of land held in single or multiple ownership (whether or not held in common ownership) that constitutes a single farming operating unit.

Farm System Change (from Tukituki)

Means a change in farming practices beyond routine fluctuations that arise as a result of rotational, annual or seasonal variations in climatic and/or market conditions.

Farm System change: A change in farm system including, increased fertiliser use, increased numbers of stock of any class, changes to planned culling, sales, purchases or stock, increased production – milk solids, increased or new crops of any type grown / grazed, increased or new supplements – either grown on farm or purchased, change to milking regime (i.e. once-a-day), change in animal breed, pasture renewal, Olsen P test results are increasing, change in or new irrigation, changes to or any new structures such as feed pads, stand-off pads, herd homes, any changes to the land such as erosion damage, new plantings, new or extended riparian areas that could change nutrient losses, any changes to infrastructure – races paddock layout that could alter runoff and potential losses of P Sediment or E.Coli, breach of property limit cap/reduction target

Land management units are areas of land that can be farmed or managed in a similar way because of underlying physical similarities.

Industry assurance scheme

Sub catchment if required for PMP rollout)

Waikato and Waipa catchment (map?)

Appendix 5: RMA sections - Classes of activity and rules about discharges

70 Rules about discharges

1. Before a regional council includes in a regional plan a rule that allows as a permitted activity—
 - (a) a discharge of a contaminant or water into water; or
 - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water,—

the regional council shall be satisfied that none of the following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar, or other contaminants):

- (c) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (d) any conspicuous change in the colour or visual clarity;
 - (e) any emission of objectionable odour;
 - (f) the rendering of fresh water unsuitable for consumption by farm animals;
 - (g) any significant adverse effects on aquatic life.
2. Before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant, the regional council shall be satisfied that, having regard to—
 - (a) the nature of the discharge and the receiving environment; and
 - (b) other alternatives, including a rule requiring the observance of minimum standards of quality of the environment,—

the inclusion of that rule in the plan is the most efficient and effective means of preventing or minimising those adverse effects on the environment.

Additional provisions for regional rules and district rules

77A Power to make rules to apply to classes of activities and specify conditions

1. A local authority may—
 - (a) categorise activities as belonging to one of the classes of activity described in subsection (2); and
 - (b) make rules in its plan or proposed plan for each class of activity that apply—
 - (i) to each activity within the class; and
 - (ii) for the purposes of that plan or proposed plan; and

- (c) specify conditions in a plan or proposed plan, but only if the conditions relate to the matters described in section 108 or 220.
- 2. An activity may be—
 - (a) a permitted activity; or
 - (b) a controlled activity; or
 - (c) a restricted discretionary activity; or
 - (d) a discretionary activity; or
 - (e) a non-complying activity; or
 - (f) a prohibited activity.
- 3. Subsection (1)(b) is subject to section 77B.

87A Classes of activities

- 1. If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a permitted activity, a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- 2. If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a controlled activity, a resource consent is required for the activity and—
 - (a) the consent authority must grant a resource consent except if—
 - (iii) section 106 applies; or
 - (iv) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 applies; and
 - (b) the consent authority's power to impose conditions on the resource consent is restricted to the matters over which control is reserved (whether in its plan or proposed plan, a national environmental standard, or otherwise); and
 - (c) the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- 3. If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—
 - (a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and
 - (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- 4. If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a discretionary activity, a resource consent is required for the activity and—
 - (a) the consent authority may decline the consent or grant the consent with or without conditions; and
 - (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

5. If an activity is described in this Act, regulations (including a national environmental standard), a plan, or a proposed plan as a non-complying activity, a resource consent is required for the activity and the consent authority may—
 - (a) decline the consent; or
 - (b) grant the consent, with or without conditions, but only if the consent authority is satisfied that the requirements of section 104D are met and the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
6. If an activity is described in this Act, regulations (including a national environmental standard), or a plan as a prohibited activity,—
 - (a) no application for a resource consent may be made for the activity; and
 - (b) the consent authority must not grant a consent for it.
7. However, subsection (6) does not apply to a concurrent application lodged under subpart 4 of Part 7A.