

High-Level Review of Ministry for the Environment's Nitrogen Allocation Discussion Paper, Version 6

Commissioned by
Kāhui Wai Māori

Prepared by
Dr Richard Meade
Cognitus Advisory Services Limited
www.cognitus.co.nz

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1. Introduction

1. Kāhui Wai Māori has asked Cognitus Economic Insight (Cognitus) to provide a high-level commentary (the Commentary) on version six of a draft discussion document prepared by Ministry for the Environment on the allocation of nitrogen emission rights (the Draft):
 - 1.1. The Commentary is prepared in light of Kāhui Wai Māori's objectives as set out in its April 2019 report *Te Mana o te Wai: The Health of our Wai, The Health of Our Nation* (the Report).
2. Cognitus is pleased to provide the Commentary, and structures it as follows:
 - 2.1. Section 2 – provides high-level summaries of the Report and the Draft;
 - 2.2. Section 3 – discusses elements of the Draft which may align well with Kāhui Wai Māori's objectives and are likely to address the Draft's stated aims;
 - 2.3. Section 4 – highlights issues which the Draft addresses but which may not align well with Kāhui Wai Māori's objectives or may be likely not to address the Draft's stated aims;
 - 2.4. Section 5 – identifies key questions which the Draft has not addressed; and
 - 2.5. Section 6 – summarises and concludes.
3. This Commentary was prepared with very little time, so is necessarily high-level, and should be understood in this light:
 - 3.1. It seeks to address key issues at a high level, without attempting to be exhaustive.

2. High-Level Summaries of *Te Mana o te Wai* and the Nitrogen Allocation Discussion Draft

2.1 Summary of *Te Mana o te Wai*

4. *Te Mana o te Wai* sets out principles and priorities for restoring the health of New Zealand's freshwater resources, and better reflecting Māori interests in the governance, allocation, use and ownership of those resources.
5. It sets out a hierarchy of obligations for freshwater management and use:
 - 5.1. With protecting the health and mauri of water as the senior obligation;
 - 5.2. Providing for essential human needs as the next priority; and
 - 5.3. Subject to the first obligation, allowing for consumptive freshwater uses, with priority consumptive allocations to iwi/hapū with customary rights in their area.
6. The Report emphasises Kāhui Wai Māori's desire that Māori customary rights and interests in water be resolved and recognised within three years. It further proposes co-governance of freshwater resources, independent of Government, and with at least 50% Maori governors, in the form of a new national body called Te Mana o te Wai Commission.

2.2 Summary of the Nitrogen Allocation Discussion Draft

7. The Draft has three parts:
 - 7.1. Part A – discusses why nitrogen discharges are a problem for New Zealand freshwater resources that requires changes in the way such discharges are currently managed;
 - 7.2. Part B – spells out New Zealand's freshwater management framework, Government's priorities for addressing nitrogen discharge issues, and pros and cons of some alternatives for addressing those issues; and
 - 7.3. Part C – discusses key implementation issues.
8. The Draft sets out Government's intentions for reform of nitrogen management, and options for public discussion. Key elements are:

- 8.1. Nitrogen management remaining the responsibility of Regional Councils under the Resource Management Act (RMA), but with greater direction by central government to achieve more consistent and more urgent management measures, while also recognising different circumstances in each region;
- 8.2. Moving towards tradable nitrogen discharge rights (i.e. a form of output-based cap and trade scheme) in priority catchments, with input-based regulatory measures playing a complementary role during the transition to new arrangements, and perhaps remaining the main approach for lower-priority catchments (i.e. for which nitrogen discharge issues are not as pronounced); and
- 8.3. Providing for efficient and equitable initial allocations of any new tradable discharge rights, and reallocations of such rights over time.

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3. Areas of Likely Alignment

3.1 Broad Aims

9. Subject to the qualification below, the following quote from para 52 of the Draft seems to align well with *Te Mana o te Wai*:

“There is a significant opportunity to achieve better economic, environmental, cultural, and social outcomes by working to achieve efficient and fair allocation of freshwater and nutrient discharges, having regard to all interests including Māori, and existing and potential new users. This issue cannot be progressed without substantive discussion with Māori about their rights and interests in freshwater under the Treaty of Waitangi.”

10. The main qualification is that Kāhui Wai Māori would likely not limit Māori rights and interests in freshwater to simply those under Treaty of Waitangi:

10.1. The Treaty does not itself spell out nature and extent of any customary rights and interests – it merely promises under Article II to preserve those rights for so long as Māori wish to retain them.

3.2 Principles-Based Approach

11. Similarly, Kāhui Wai Māori would likely support the Government consulting on the proposed reforms on a principled basis (cf paras 55-56). However, Kāhui Wai Māori would likely also:

11.1. Challenge the Government's asserted role as guardian of interests of all New Zealanders in “our” water resources (para 55);

11.2. This presupposes that water is commonly or publicly owned, let alone not owned by Māori;

11.3. Kāhui Wai Māori might likewise challenge the Government's presumption that it should necessarily be the party leading changes in Regional Councils' approach (para 64).

3.3 Need for Confidence

12. Kāhui Wai Māori might applaud the Draft's proposal to have measures that create “confidence”:

- 12.1. However, this should also include provision for “commitment devices” that reduce scope for future Governments to arbitrarily change nitrogen regime rules, such as independent governance of the regime (see Section 4);
- 12.2. Important questions remain regarding how to navigate conflicts between achieving certainty/commitment on the one hand, and the need for the system to be “adaptive”;¹
- 12.3. Relatedly, need to define “wellbeing”, or at least specify how it will be defined (and evolve in response to changing imperatives, norms and preferences);
- 12.4. Furthermore, is the objective to maximise long-term well-being or the present value of well-being over time? The Draft is ambiguous on this point.

3.4 Balancing Scale Economies and Need for Fit-for-Purpose Solutions

13. Likewise, Kāhui Wai Māori might applaud the Draft’s intent not to impose one-size-fits-all solutions:
 - 13.1. However, it is also important to recognise that there are considerable economies of scale in institutional and market design (cf para 61);
 - 13.2. Such scale economies can affect the balance of convenience between tailored and more uniform solutions.

3.5 Balancing Equity and Efficiency

14. Finally, Kāhui Wai Māori would likely applaud the recognition that both equity and efficiency need to be addressed, and over time:
 - 14.1. The obvious difficulty is defining what that means, and how best to achieve the inevitable trade-offs between often-competing interests.

¹ I address such questions at length in my discussion of “efficiently-dynamic regulation” in Section 8 of *Preparing Electricity Regulation for Disruptive Technologies, Business Models and Players – In the Long-Term Interests of Consumers*, an independent White Paper commissioned by the Electricity Retailers' Association of New Zealand (ERANZ), August 2018.

3.6 Balancing Static and Dynamic Efficiency

15. Static efficiency refers to providing most efficient outcomes *at a point in time*:
- 15.1. By contrast, dynamic efficiency refers to providing most efficient outcomes *over time*, taking into account matters such as efficient incentives for long-term investments (which can affect outcomes over multiple periods).
16. The Draft (at paras 76-90) sets out four broad models for initial allocations. They are, with associated efficiency implications, as follows:
- 16.1. *Allocations based on current or previous use* – “dynamic economic efficiency based allocation” – attempting to account for how rule changes affect long-term investment incentives and hence dynamic economic efficiency, and/or “fairness”/“legitimate expectation”;
- 16.2. *Allocations by auction* – “static economic efficiency-based allocation” – prioritising short-term efficiency over dynamic economic efficiency (unless perpetual or sufficiently long-term rights are auctioned with sufficient security), and also over “fairness”/“legitimate expectation”;
- 16.3. *Allocations based on land characteristics* – “technical efficiency-based allocation” – prioritising neither static nor dynamic economic efficiency, instead focusing just on environmental impacts, and in principle such technical efficiency should be a component of statically or dynamically economic efficiency (which take into account technical but also economic considerations); and
- 16.4. *Administrative allocation* – e.g. first-come-first-served or multi-criteria approaches, “the least worst allocation when all superior allocation models are infeasible due to technology or other reasons”.
17. The administrative allocation is superficially attractive due to its ability to accommodate multiple criteria. However, that could be said to reflect the current RMS-based model, which the parties would most likely agree has not served New Zealand well:
- 17.1. Like the model basing allocations on land characteristics, it is likely to be the least efficient of all four alternatives, therefore creating the fewest gains from reform.

18. Instead, focus is rightly on some balance between grand-parenting (allocation based on current or previous – but not future – use), and auctioning:

18.1. The latter should maximise static efficiency, which is to be preferred if there are no significant dynamic considerations to take into account (e.g. long-term investment incentives);

18.2. However, where preserving long-term investment incentives remains important – which both Māori and the Crown should wish to account for – the former plays an important role.

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4. Areas of Possible Misalignment

4.1 Inadequate Recognition of Māori Governance Interests

19. The Draft's proposals are predicated on an assumed level of control rights and effective ownership rights being held by Government (including rights to control the application of any auction proceeds, resource rentals, or royalties, from permit allocations), in the context of:

19.1. Māori, as Treaty partner, expecting substantive involvement in the design of any new arrangements for freshwater management and use; and

19.2. Māori having potential proprietary or other customary rights and interests in freshwater which may be tested, described and affirmed over the course of any transition to new arrangements.

20. This means the governance arrangements for any structural reforms, including provisions for allocations of discharge rights, should either:

20.1. Recognise Māori interests in freshwater management and use to a greater degree than proposed, from the outset; or

20.2. Provide for increased such recognition as and when Māori customary rights and interests become better defined, while still enabling progress to be made on establishing the nitrogen regime in the interim.

4.2 Possible Trespassing on Other Māori Freshwater Interests

21. Relatedly, since nitrogen discharge rights affect the use of water (i.e. its use to absorb excess nitrogen), the creation of a nitrogen discharges regime trespasses to a degree on any subsequent creation of other water use allocations and any associated ownership rights:

21.1. It will therefore be important to ensure that proper subsidiarity is established between a nitrogen regime and any subsequent water use regime, so that establishment of the former does not unduly constrain development of the latter.

22. Another related question is whether the case has properly been made for focusing on nitrogen discharge management ahead of managing other types of discharge, and other types of water trading:

22.1. If there are significant synergies between nitrogen trading and these other activities, then there may be little cost in starting with nitrogen trading;

22.2. However, if there are conflicts between nitrogen trading and these other activities, starting with nitrogen trading could compromise the achievement of these other activities.²

23. Provided there are adequate protection mechanisms in place for wider Māori freshwater interests (e.g. see clawback mechanisms and precedents for other protection mechanisms as discussed below below), these sequencing risks might be sufficiently managed.

4.3 Possibly Undue Sacrifice of Efficiency to Achieve Equity Objectives

24. Both *Te Mana o te Wai* and the Draft oppose grand-parenting of long-term or perpetual rights to holders of existing discharge rights for fear doing so will unfairly entrench emitters, and preclude entry by others (including Māori):

24.1. This unduly conflates equity considerations with design of appropriate property rights for trading in a nitrogen cap and trade scheme;

24.2. Greater consideration needs to be made of the best form – or forms – of tradable discharge rights, to ensure efficiency gains are maximised; and

24.3. Separate provision should be made for reallocating rights over time, including to resolve discharge right over-allocations, and to Māori as and when their customary rights and interests become better defined.

25. Maximising efficiency gains from any new regime is important to:

25.1. Make it worthwhile to move to any such regime, given the costs (including business disruption costs) and risks involved; and

² Both the Report and Draft focus on consumptive water uses, and how these relate to nitrogen discharge management. It should also be noted that non-consumptive water uses (e.g. hydro generation) will also affect nitrogen impacts on water quality, so should also be considered.

- 25.2. To maximise the gains that can be shared between “winners” and “losers” from regime change, which helps to reduce opposition to change.
26. Well-defined property rights are an essential feature of any cap and trade scheme. Key dimensions include having rights:³
- 26.1. Of sufficient length that their holders can make investments with sufficient surety (e.g. which can be used as security for raising loans);⁴ and
- 26.2. Allowing short-term trading without prejudicing long-term discharge right security; and
- 26.3. Appropriately sharing risks between rights holders, regime designers and administrators, and others.
27. As to the latter, key risks include:
- 27.1. Climate risks – affecting water health and nitrogen impacts;
- 27.2. Technology risks – e.g. for monitoring and/or estimating discharges;
- 27.3. Institutional risks – e.g. how future freshwater management regimes might affect a nitrogen discharge regime; and
- 27.4. Ownership risks – e.g. if Māori customary rights and interests in freshwater are (not) confirmed.
28. It is important to consider defining tradable rights that efficiently address such uncertainties, with options including:⁵

³ It would be useful for the Draft to also consider opportunities for “win-win” branding opportunities under an improved regime for managing water pollution – e.g. “clean water” certification for compliant emitters to use to enhance the perceived value of their products.

⁴ Para 98 of the Draft recognises that insecure and/or short-term discharge rights affect banks’ willingness to lend and hence undermine investments in improved practices. Such insecure and/or short-term rights undermine investments more generally, e.g. due to risk that long-term investments are “held up” through a future inability to secure necessary discharge rights.

⁵ Para 139 of the Draft simply records the government’s intention that traded rights be “temporary” with no presumption of rollover.

- 28.1. Creating a mix of long-term and short-term discharge rights, some of which might be absolute rights, while others might only be proportional and/or otherwise subject to clawback in light of changing circumstances;⁶
- 28.2. Any clawback mechanisms not only providing for resolving over-allocations and changes in discharge measurement or caps, but also for increasing allocations to efficient new entrants,⁷ and Māori as required.
29. Creating property rights with adequate security, and protection against unforeseen rights changes, is critical for achieving efficient investments that rely on access to discharge rights:
- 29.1. This implies a necessary trade-off between equity and static efficiency on the one hand, and honouring reasonable expectations and historical good-faith investments on the other;
- 29.2. With suitably nuanced property rights definitions, including clawback mechanisms – including suitable compensation arrangements – it should be possible to maximise efficiency while also balancing other objectives:
- 29.2.1. This could, for example, involve grand-parenting of only certain tiers of rights, and enabling parties with different preferences for discharge right security or tenure to self select (including at a price) into their preferred form of right.⁸
30. Additionally, both Māori and the Crown might wish to consider whether prioritising sanitation rights creates undue efficiency trade-offs:

⁶ Para 107 of the Draft notes that some Regional Councils already use proportional rather than absolute discharge permits. The Draft also notes that short-term rights are sometimes issued to ease transition to new arrangements (though that is likely to create efficiency costs if the nature of that transition is not clearly and credibly pre-signalled).

⁷ The Draft makes no mention of the likely outcome that parties seeking secure long-term access to discharge rights will use ownership (e.g. vertical integration) and/or contracting mechanisms to do so. This could lead to vertical foreclosure by incumbents of new entrants, although in many cases such foreclosure is not inefficient because vertical integration (or contracting) can efficiently resolve vertical coordination issues. In any case, general Commerce Act provisions exist to protect against such abuses, even if reform is needed to ensure such provisions are effective.

⁸ Any grand-parenting should be based on historical base-lines, to avoid “gold rushes” that arise when future base-lines are used.

- 30.1. Giving such priority has natural appeal on equity grounds, but also blunts incentives for innovation and other efficiencies in sanitation services.

4.4 Precedents for Recognising/Protecting Māori Interests in Context of Wider Reforms

31. As to the latter, precedents exist for how New Zealand has provided for possible increases in Māori resource interests while enabling reform of ownership and management of those interests, e.g.:

31.1. Shares of radio spectrum, fishing quota, and commercial aquaculture space;

31.2. Contingent interests (i.e. subject to Waitangi Tribunal recommendations) in State owned Enterprise land, and Crown forest land, under the Treaty of Waitangi State Enterprises Act and Crown Forest Assets Act respectively:

31.2.1. Including the creation of entities such as Crown Forestry Rental Trust (to hold Crown forest land rentals pending resolution of Treaty claims to that land) and Te Ohu Kai Moana (to hold fishing quota pending resolution of allocation models);⁹ and

31.3. The Māori Reserved Lands Amendment Act, including Crown compensation for leaseholders whose rights were curtailed in order to more properly reflect Māori landowners' proprietary interests in leasehold land subject to uneconomic long-term leases.¹⁰

32. These precedents could usefully provide models to adapt to the question of protecting possible Māori freshwater rights and interests while enabling otherwise long-term discharge rights to be created and allocated to third parties:

32.1. They are likely to be key in addressing questions about how any permit auction proceeds, resource rents or royalties – all of which “belong” to the resource “owner(s)” – should be allocated pending resolution of iwi/hapū claims to customary rights and interests in freshwater resources;

⁹ Most commentators would probably agree that greater clarity around allocation principles from the outset would have avoided years of inevitable dispute over quota allocation.

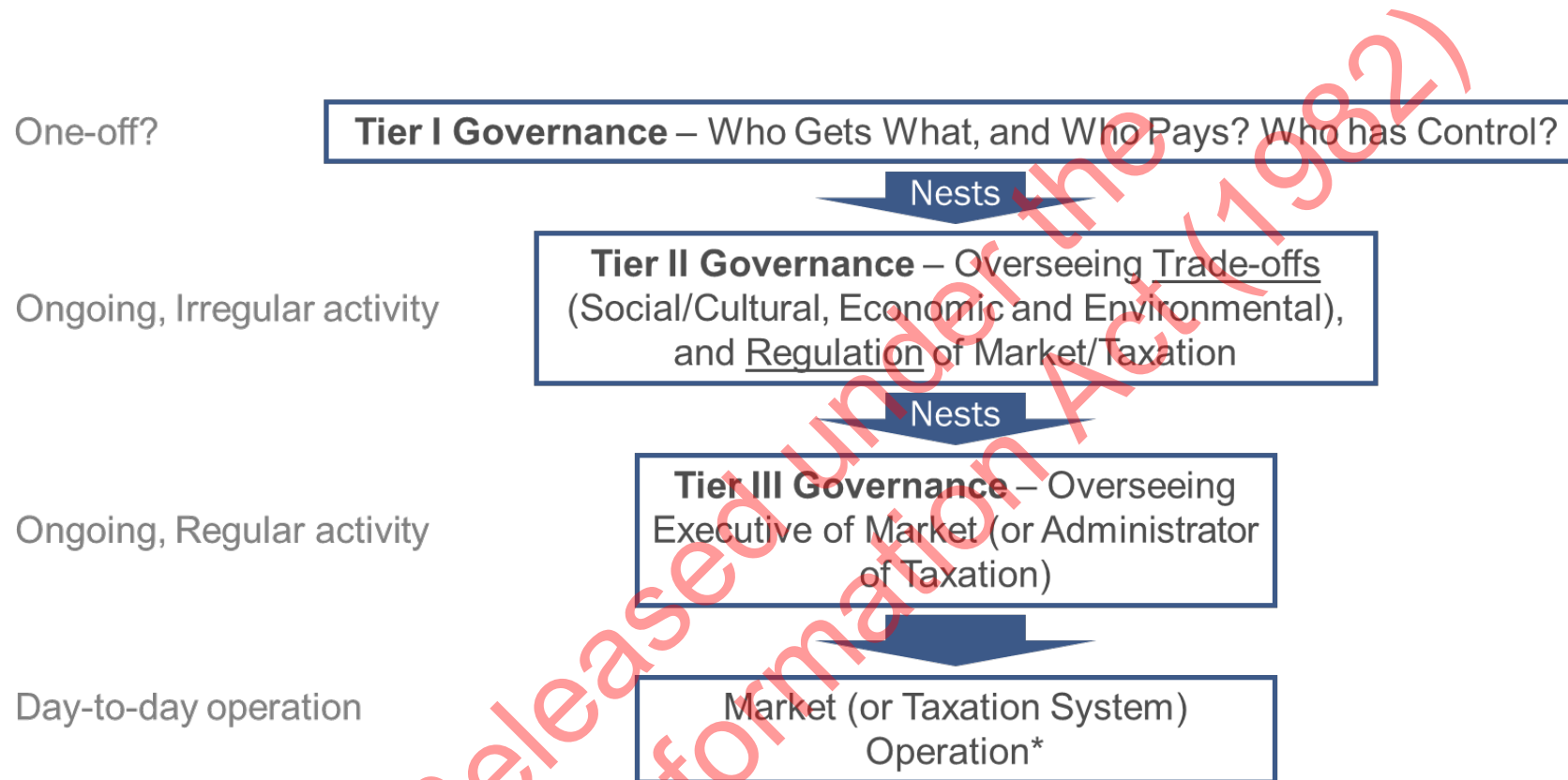
¹⁰ Separate conversations may be required with the Crown regarding whether Māori should be compensated for having been denied either their customary rights and interests in water, or equitable access to water rights enjoyed by others under schemes governed by the Crown.

- 32.2. The Draft seems to be predicated on the Crown having the decision rights over such funding allocations, when the Crown itself does not assert it has ownership of the underlying resource, and it acknowledges Māori governance rights (at the least) in freshwater resources.

4.5 Multiple Governance Tiers to be Separately Considered

33. In addition to designing efficient property rights and clawback mechanisms, designing efficient governance institutions is also key for regime success, especially in light of the types of uncertainties highlighted above. As shown in Figure 1, there are three main tiers of governance to consider:
- 33.1. At the highest level (Tier I), governance of long-term issues such as principles and decisions regarding who should ultimately own and control the relevant resources;
- 33.2. At the next level down (Tier II), governance of medium-term issues such as how to balance trade-offs between competing interests as circumstances change over time, given the overall framework for resource management; and
- 33.3. At the lowest level (Tier III), day-to-day governance of any regime (e.g. mechanisms for trading allocations under any cap and trade scheme), taking the higher governance levels as given.
34. Tier I governance relates to the “just transition” the government rightly wishes to achieve:
- 34.1. As discussed above, the question is how such arrangements appropriately recognise both recognised Māori interests, and customary rights and interests that might be better defined in the future?
- 34.2. This could, for example, include provision for a specialist tribunal (not the Waitangi Tribunal) to efficiently resolve the nature and extent of customary rights and interests, as agreed by the Crown and Māori.
35. Tier II governance also raises potentially-thorny questions of achieving the right balance between social, cultural, economic, environmental and technical objectives as circumstances and priorities/preferences change:
- 35.1. This too raises important questions about how to properly recognise existing or latent Māori interests.
36. Tier III governance relates to likely less-thorny questions, albeit appropriate Māori representation will remain a relevant matter to resolve.

Figure 1 – Three Governance Tiers to consider



* Ownership possibilities – Companies (investor- or user-owned), iwi, not-for-profit, community/trust, local or central government, etc.

Source: *Political Economy of New Zealand Water Reform*, presentation at the New Zealand Initiative members' annual retreat, Auckland, March 2019.

4.6 Ownership Models for Resolving Compliance Issues

37. Related to the above governance questions is the matter of ensuring compliance with any new nitrates discharge regime. The Draft rightly identifies that monitoring and enforcement will be key features of any new regime:

37.1. However, it presumes that monitoring and enforcement will be achieved through regulatory approaches such as augmented RMA-based approaches;

37.2. It does so acknowledging that there needs to be “community” buy-in to any new regime.

38. Greater consideration could be given to alternative monitoring and compliance approaches, such as through devolving these activities to self-regulating “user groups” (e.g. cooperatives) which rely on mutual monitoring and shared interests to ensure members act in collective interest at a more decentralised level than Regional Councils:

38.1. This does not dispense with the need for oversight (e.g. audits to ensure compliance, and to detect collusion to defeat regulation);

38.2. However, it makes greater use of private information and incentives to address regulatory concerns which may prove more effective than any one-size-fits-all regulatory model:

38.2.1. It also empowers communities of users – including Māori – to take greater responsibility for achieving regulatory aims.

4.7 Allowing for Technology Innovations

39. Relatedly, the Draft sensibly gives priority to upgrading OVERSEER as a useful tool for implementing a cap and trade nitrogen scheme, given currently high costs of directly monitoring nitrogen discharges at user-level:

39.1. However, it would be desirable to avoid “hard-wiring” this if technology costs fall, and better tools could be deployed (e.g. satellite-based monitoring);

39.2. Possible solutions include sunset or review clauses on the use of OVERSEER, or pre-signalling that OVERSEER is the main solution unless and until a more effective solution emerges and can feasibly be implemented.

40. Likewise, an implicit but often-neglected element of any cap and trade scheme is arrangements for trading discharge rights, over and above any auction mechanisms for initial allocations or periodic re-allocations:¹¹

40.1. Without such arrangements, trading costs can be prohibitive, which undermines the efficiency of cap and trade schemes.

41. A related issue is the design of mechanisms for vetting the nitrogen discharge implications of proposed trades of emissions rights. At present discharge permits can, in effect, be traded, even if that requires trade of the underlying land to which the rights are attached:

41.1. Not only does such “bundling” of land and discharge rights raise transaction costs, so too do administrative processes for approving such trades.

42. An efficient trading mechanism for discharge rights should include a codified (and ideally “coded”) mechanism for assessing the nitrogen discharge implications of proposed trades:

42.1. A standard cap and trade scheme says nothing about how to achieve this;

42.2. By contrast, “smart markets” represent a possible, sophisticated approach for not just making the required assessments, but also for setting prices to properly reflect the impact of proposed trades on environmental constraints (such as those set out in the *Te Mana o te Wai* hierarchy of objectives):

42.2.1. That way the hierarchy is treated as a “constraint” which any trade must satisfy, and trade prices are set after taking such constraints into account.¹²

4.8 Inadvertent Entry Barriers

43. In principle any cap and trade scheme allows for entry by efficient parties:

43.1. If they are more efficient than incumbent emitters, then they can afford to pay a higher price for discharge rights than the incumbents are prepared to accept, and hence efficiency-enhancing trade can emerge (provided transaction costs are low);

¹¹ Para 96 of the Draft eludes to the issues discussed here.

¹² The New Zealand wholesale electricity market implements just such a “smart market”, with the relevant constraints relating to the physics of electricity transmission, which constraints must always be respected for any electricity trade.

- 43.2. However, this ignores questions of ability to pay, and also equity rationales for ensuring less-efficient emitters (e.g. Māori owners of less-developed land) secure discharge rights.
44. This provides a rationale for enabling re-allocations outside of the trading environment, and also aside from any auctions (unless such auctions provide quotas for certain target groups of emitters).
45. However, it is important to recognise that other aspects of the Draft might also create entry barriers, e.g.:
- 45.1. Farm management plans are to be mandatory by 2030 (para 122) – this will raise costs and entry barriers to smaller and/or less-experienced entrants; and
- 45.2. More generally, forcing water users to prove they have systems and infrastructure to responsibly manage nitrogen discharges will create entry barriers and favour larger users.

4.9 Needlessly Limiting Emissions Reductions

46. User pays proposals (i.e. that emitters pay the costs of reducing discharges, as in Table 1 on pp 14-15 of the Draft) apparently meet fairness criteria, but also limit opportunities for possible gains.
47. Specifically, if large social benefits are created by an emitter reducing discharges, then there is reason to consider sharing some of those benefits with emitters to support them reducing their emissions:
- 47.1. Relying just on emitters' own resources and incentives to achieve such reductions could unnecessarily limit their realisation.

5. Key Questions Not Addressed

5.1 Setting of Nitrogen Caps

48. In any cap and trade scheme the setting of the relevant nitrogen cap – at whatever level of granularity – is obviously key:

48.1. So too are the criteria for, and governance of, any future cap changes – see the Tier II governance discussion in Section 4.5.

49. The Draft is oddly silent on these matters, and greater clarity is required:

49.1. Including how Māori will be represented in the associated governance institutions, and how Māori preferences will be reflected in resolving the associated trade-offs.

50. Credible and robust institutions are required to ensure the cap setting process, and re-setting process, is well-signalled and understood by all parties making long-term investments and other commitments:

50.1. Absent such institutions emitters will lack signals for making efficient investments.

51. Likewise, the Draft does not adequately address the relative merits of nitrogen caps being differentiated by source, since not all discharges have the same impact on water quality:

51.1. This will require an assessment of whether the added complexity of a differentiated scheme is warranted, relative to a scheme which treats discharges more uniformly.

5.2 Defining Interests of Future Generations

52. Balancing the interests of existing stakeholders, whose preferences can be determined with some degree of precision, is not an easy matter.

53. The Draft gives priority to also addressing future generations' interests, when those interests are inherently unknown. All that can be said with any certainty is that:

53.1. Future generations are likely to have access to better technologies for addressing nitrogen discharge problems; and

53.2. They are also likely to be much richer than current generations, so will not place as high a value on future gains as current generations.

54. This too is an important consideration which the Draft does not explore in any depth despite its obvious importance:

54.1. Absent such clarity, this is yet another question relegated to residual discretions made by regime governance mechanisms, and for which appropriate Māori representation will be key.

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6. Summary and Conclusions

55. In summary, the key findings and recommendations of this Commentary are:

55.1. The Draft makes sensible recommendations for establishing a cap and trade scheme for nitrogen discharges, on a targeted and phased basis, with a focus on balancing competing current interests in a fair and efficient way, and also balancing current and future interests:

55.1.1. How this interfaces with, and possibly constrains, other freshwater initiatives needs to be carefully considered.

55.2. Many details remain to be developed (e.g. cap setting), the governance of which development process will be key:

55.2.1. Multiple tiers of governance need to be provided for as described earlier.

55.3. The proposed arrangements presume greater degree of residual control and ownership rights by the Government than would seem appropriate given the Government's acknowledgement of both Māori Treaty partner interests, and asserted customary rights and interests (which may prove to materialise):

55.3.1. Hence greater governance, and contingent ownership rights, of Māori ought to be provided for;

55.3.2. Precedents exist for mechanisms which can protect contingent Māori interests while facilitating efficiency-enhancing reforms, and such mechanisms (or better versions thereof) are well-worth exploring in the case of nitrogen discharge reforms.

55.4. Certain policy directions – mainly regarding property right definition and grand-parenting, but also other questions – deserve more critical consideration, to ensure efficiency gains are maximised, while also achieving fairness, and achieving other objectives (including greater allocations for Māori); and

55.5. Important institutional details, such as how to achieve credible well-signalled policy directions in the face of considerable uncertainties, must also be developed.

* * *