

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Lake Rotorua Nutrient Management –
PROPOSED PLAN CHANGE 10 to the Bay of
Plenty Regional Water and Land Plan

AND

IN THE MATTER OF

An Application to defer proceedings by the Lake
Rotorua Primary Producers Collective

**MEMORANDUM TO THE CHAIR OF THE HEARING PANEL BY COUNSEL FOR THE
BAY OF PLENTY REGIONAL COUNCIL
DATED 4 NOVEMBER 2016
CONCERNING MEMORANDUM 2 OF THE HEARING COMMISSIONERS**

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MAY IT PLEASE THE HEARING PANEL

Introduction

1. We refer to Memorandum No. 2 of the Hearing Commissioners dated 12 October 2016, and to Memorandum No. 1 dated 11 October 2016.
2. This memorandum addresses the application from the Lake Rotorua Primary Producers Collective (“Applicant”) (undated) for a deferment of the hearing directions set out in Memorandum No 1, setting dates for a public hearing of Proposed Plan Change 10 (“PPC 10”) to commence on Monday 13 March 2017. Pursuant to Memorandum No. 2 directing the provision of further details by the Applicant and a time for responses, the Council wishes to respond, opposing the application.
3. This response addresses the following issues:
 - (a) Science review: MOU and PPC 10
 - (b) ROTAN
 - (c) Certainty and the issues for determination

Science review: MOU and PPC 10

4. The Applicant relies upon the fact that the Council is undertaking a science review in 2017 to seek the deferment of the hearings until the results of the review can feed in to solution of Lake Rotorua’s water quality problems. Underpinning that request is their belief in the possibility that further and better scientific knowledge might allow for better or different solutions, and they say that the review will lessen the contest on scientific evidence presented to the Hearings Panel. The Council is not sure that any new science reports from the review will be less contested than the current ones, as that is the nature of the process. It may be that it is the regulatory framework that is really being contested, not the scientific evidence.
5. The Applicant wants the outcome of the science review to “inform the development of this policy and rule framework” and for stakeholders to be fully informed and able to “respond to all the options and consequences”, and for hearings to be deferred until some future time after that occurs.
6. That is not a deferment, but a request that PPC 10 is abandoned and a new solution generated at some point in the future that the Applicant finds preferable. It overlooks

that this policy and rule framework has already been developed and notified and that the process is now one of hearing the merits and making recommendations and decisions about the contents of PPC 10.

7. The Applicant appends the Memorandum of Understanding dated 9 August 2016 between the Council, the Applicant and the Lakes Water Quality Society (“MOU”) in support of the Application to (effectively) cancel or put the hearings on hold indefinitely.
8. The Council entered into the MOU in good faith and as an integral part of Proposed Plan Change 10, referencing and including the notified text of Methods 2 and 3 of PPC 10. Its position is that PPC 10 was built on the best science. Methods 2 and 3 of PPC 10 expressly contemplate and require that the best science will continue to be sought, and that this will feed into the development of future nutrient reduction policies – paragraphs 2 and 3 of the MOU refer to this process.
9. PPC 10 was notified on 29 February 2016 but has been very long in development. The commitment to the science review was part of notified PPC 10 and the MOU does not alter the planned process, but provides further detail about the respective roles of the MOU parties, (paragraph 4 of the MOU).

ROTAN

10. The Applicant also points to the proposed review and rerun of the ROTAN model as being fundamental to the development of the policy and rule framework, and pleads this in support of the request to defer the hearings.
11. LR M2(c)(ii) is the relevant part of Method 2 of PPC 10 that refers to the ROTAN model. Again, Method 2 expressly contemplates an ongoing process of review and consideration, including to the ROTAN modelling that was used to make predictions about Nitrogen leaching to Lake Rotorua under different land use scenarios.
12. The Council considers that its estimate of the amount of Nitrogen reduction required to Lake Rotorua (as stated in the operative Regional Policy Statement) is realistic and supported by the science. This issue has been canvassed in the section 32 report and in further modelling on the annual N loads reaching the Lake (ROTAN-A). The start of the ROTAN-A project predates the MOU by some 5 months. The Council will be providing its section 42A report along with the evidence it wishes to provide in support of PPC 10 on 20 January 2017 as per the directions in Memorandum 1.

Certainty and the issues for determination

13. The Applicant says that they “believe that more understanding and clarification of the science data is needed to ensure that all decisions made, and actions taken, in regard to Lake Rotorua’s water quality are the most effective and efficient known and available”.
14. With respect, that submission approaches the merits issue that is the very question for the Hearings Panel to determine, including whether the objectives of the proposal are the most appropriate way to achieve the purpose of the Act, and the evaluation required under section 32.
15. The Applicant in seeking this deferral is rehearsing the presentation of its submissions on the merits of PPC 10, including its position on the science underpinning it, without acknowledging that the Hearings Panel would have to reach a view on PPC 10 and the section 32 and 42A reports before being able to determine whether it should proceed to grant the ‘deferral’.
16. It also fails to acknowledge that the Council entered into the MOU in August 2016 in reliance on the proposed new provisions of PPC 10 that were notified in February 2016, and in doing so was operating pursuant to the processes set out in PPC 10. This reliance on PPC 10 cannot give rise to a ground to abandon the hearing of the merits of PPC 10.
17. The Council supports the directions given in Memorandum 1 and seeks that the Hearing Panel confirms these accordingly.

4 November 2010



S E Wooler

Counsel for the Regional Council