

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**

MEMORANDUM ON BEHALF OF FEDERATED FARMERS
26 April 2017



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FARMERS**
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MEMORANDUM ON BEHALF OF FEDERATED FARMERS

May it please the Hearing Commissioners

1. Counsel refers to Federated Farmers' presentation to the Hearing Panel on 20 April 2017.
2. The purpose of this memorandum is to provide the following information requested by the Hearing Panel:
 - a. Confirmation of the bottom lines or critical elements of Federated Farmers' proposal and the extent to which the relief sought incorporates other parties' concerns. ("**First Topic**")
 - b. A document showing all of the changes Federated Farmers seeks to Proposed Plan Change 10 ("PPC10") (this is attached as two versions – track changes and a clean copy). ("**Second Topic**")
 - c. A copy of the report by Dairy NZ regarding the effects of non-regulated sustainable milk plans on nutrient reduction in the Upper Waikato Catchment. ("**Third Topic**")
3. The purpose of this memorandum is to also provide legal submissions on two matters as agreed with Counsel for Bay of Plenty Regional Council ("BOPRC"):
 - a. Federated Farmers' proposed inclusion of Method 41 for subcatchment action plans in the Lake Rotorua catchment. ("**Fourth Topic**")
 - b. The definition of "nutrient benchmark" in Federated Farmers' proposed Rule 3. ("**Fifth Topic**")

First Topic: Critical elements of Federated Farmers' proposal

4. During Federated Farmers' presentation on 20 April 2017, Commissioner Cowie asked if there were critical elements to Federated Farmers' proposal (in terms of "bottom lines"). Counsel for BOPRC has since advised that understanding Federated Farmers' bottom lines and the extent to which this incorporates what other parties are seeking may address some of the questions she has for Ms McGruddy.

Bottom lines and critical elements

5. The bottom lines in Federated Farmers' proposal are as follows:
 - a. **NPS-FM** – PPC10 does not give effect to the National Policy Statement for Freshwater Management 2014 (“NPS-FM”). PPC10 should state that the upcoming Rotorua Lakes Water Management Area (“WMA”) community process is the step that is intended to give effect to the NPS-FM.
 - b. **Allocation** – it is premature to land a nitrogen allocation regime in PPC10. Allocation should be considered as part of the Rotorua Lakes WMA process, informed by the Science Review, and supported by freshwater accounting for all sources and contributors of nutrients.
 - c. **Individual NDAs** – regulated farm-level nitrogen discharge allocations (“NDAs”) are not supported.
 - i. The Science Review is expected to re-assess nitrogen and phosphorous targets in the coming year.
 - ii. Allocations to one sector cannot properly be considered in isolation from other sectors.
 - iii. The proposed NDAs are not reasonably achievable with current technology.
 - iv. The proposed NDAs would result in significant and irreversible harm to individual farms and to the wider catchment economy and community.
 - d. **Regulation of farm plans** – the use of farm plans as a “point of compliance” in the regulatory framework is not supported.
6. The critical elements of the relief sought by Federated Famers are:
 - a. **Science Review** – cement the commitment to the Science Review in 2017 and the consequential review of Bay of Plenty Regional Water and Land Plan (“RWLP”) and Regional Policy Statement (“RPS”) objectives and policies.

- b. **Rule 11** – retain the Rule 11 regulatory framework.
 - i. Extend the application to non-benchmarked properties.
 - ii. Establish reliable benchmark estimates for properties under 40ha (which collectively comprise 5000ha).
- c. **Provide an enabling framework** – for community engagement, innovation and solutions to drive continued reductions in nutrient losses to the Lake.
 - i. Acknowledge the significant progress that has been made beyond Rule 11 benchmarks towards the catchment intermediate target.
 - ii. Support the establishment and resourcing of Sub-catchment Action Plans to prioritise nutrient reductions (both nitrogen and phosphorous), informed by sub-catchment specific data.
 - iii. Review the Incentives Fund with a view to potentially expanding the focus and potentially informed by the results of the science review.¹

Concerns raised by other parties

- 7. The extent to which Federated Farmers' relief addresses other parties' concerns is explained below in the context of six key concerns raised by other submitters.

First concern: PPC10 “locks in” Rule 11 benchmarks as the basis for allocation decisions; the allocation framework has not been sufficiently discussed or is not sufficiently transparent or explicit for all sectors; and various or all of the sectors seek a different allocation methodology, or different allocations, or exploration of alternatives

- 8. Federated Farmers' relief provides for future discussion of allocation frameworks within the upcoming WMA process, informed by the results of

¹ This does not need to be a part of PPC10 and this could be in the form of a recommendation from the Hearing Panel that the terms of reference of the Incentives fund are reviewed.

the Science Review, supported by full freshwater accounting, and with scope for consideration of all options.

Second concern: PPC10 does not recognise earlier environmental investments; it does not provide for flexibility of land use (including flexibility for “undeveloped” land or land returned as part of Treaty settlements which are currently benchmarked to forestry values); and it does not sufficiently provide for economic, social and cultural values alongside safeguarding the health of the Lake

9. Federated Farmers’ relief includes amendments to definitions (e.g. area, farming activity, farming enterprise) to provide for farm enterprises to be managed as whole entities and benchmarked as “whole farm averages.” The intention is two-fold:
 - a. In part, it is to respect earlier farm investments and “set-asides.”
 - b. In part, it is to provide flexibility for “intensification” in one area of the farm enterprise to be offset by “de-intensification” in another part.
10. Federated Farmers’ relief includes rules that enable consideration of development above whole farm benchmarks, subject to effects being offset. This includes matters for control (Rule 4) or discretion (Rule 5) which enable consideration of innovative approaches to offsetting effects, either within or outside the farm enterprise.
11. Federated Farmers’ relief includes policies and methods which provide for an expanded portfolio of mitigations (including leading edge practices or innovations which are not yet in Overseer e.g. water cress, Spikey) and it provides for exploration of an expanded portfolio of flexibility mechanisms.

Third concern: PPC10 presents the “Integrated Framework” which implies a capped allocation for the Rotorua City Wastewater Treatment Plant, potentially compromising the City’s ability to cater for projected growth and to provide for best practicable treatment within the context of current technology and community affordability.

12. Federated Farmers’ relief recommends that future decisions about allocation must be informed by the Science Review and appropriate community engagement across the full range of values and objectives, including for the sustainable management and development of the City wastewater treatment plant.

13. Pending that proper review, Federated Farmers recommends active exploration of mechanisms to support flexibility and innovation (as above), while acknowledging this may not fully satisfy other parties' concerns in the short-term

Fourth concern: the Incentives Fund criteria are too narrow (e.g. exclusion of land purchase options) and the requirement for 999 year contracts is “oppressive”

14. Federated Farmers' relief recommends consideration of an expanded focus for the Incentives Fund.
15. To the extent that the Incentives Fund criteria might be reviewed prior to 2022, this could significantly assist consideration of development opportunities (including for undeveloped Maori land) whilst still maintaining a downward trajectory of nutrient reductions.

Fifth concern: PPC10 is creating “win-lose” tensions within the community rather than win-win outcomes for the Lake and the catchment community

16. Federated Farmers' relief seeks that PPC10 provides a positive and enabling platform for whole-of-community engagement, innovation and solutions. In particular, through development of Sub-catchment Action Plans and the WMA community process.

Sixth concern: Federated Farmers' relief does not sufficiently provide for assurance of progress to meet the 2022 catchment target

17. The three key elements required for achievement of the 2022 catchment target are:
 - a. Pastoral reduction target (38t): the evidence indicates significant progress has already been made.²
 - b. Engineering (Tikitere, urban) and gorse reductions (80t): no evidence has been presented on this element.
 - c. Incentives Fund (100t): it is understood that progress has been limited to date but Federated Farmers' relief seeks consideration of an

² Joint Statement of Economic Experts (revised) dated 18 April 2017 at [42].

expanded focus to support uptake of efficient and effective interventions to deliver the outcome sought for the lake.

18. It is submitted that this highlights the importance of Federated Farmers' earlier recommendation for review of the Incentives Fund and that the pastoral reduction target is the "modest" component of reductions to 2022.

Second Topic: Changes sought by Federated Farmers to PPC10

19. In order to clarify the specific changes sought by Federated Farmers, the following documents are attached for filing with this memorandum:³
 - a. A clean copy of the changes sought by Federated Farmers to PPC10. The purpose is to provide an update of all of the changes sought following discussions held or information filed during the hearing (within scope of the original submission). (**"Appendix 1"**)
 - b. A track changes copy of the changes sought by Federated Farmers to PPC10. The purpose is to show how Federated Farmers seeks to amend the existing sections of PPC10. Amendments shown in red are used to identify any differences from the specific amendments shown in Federated Farmers' original submission. (**"Appendix 2"**)
 - c. A document explaining the track changes shown in red and explaining why they are refinements or consequential changes to the relief sought and within the scope of Federated Farmers' submission. (**"Appendix 3"**)

Third Topic: Dairy NZ reports on Upper Waikato Catchment

20. During Federated Farmers' presentation on 20 April 2017, Commissioner Cowie asked about evidence of non regulatory measures resulting in nitrogen reductions. The sustainable milk plan ("SMP") work by Dairy NZ was referred to as an example of such measures.
21. A copy of Dairy NZ's report titled "Potential reductions in farm nutrient loads resulting from farmer practice change in the Upper Waikato

³ This is provided in response to concern raised by the Hearing Panel during Federated Farmers' presentation that the track changes document filed on 17 March 2017 did not contain all changes sought and it would be helpful if all changes sought were in a single document.

Catchment: SMP final call analysis” and dated 15 September 2015 is attached for filing with this memorandum. (“**Appendix 4**”)

22. Federated Farmers has consulted with Dairy NZ who agrees with the submission of this report to the Hearing Panel for the purposes of this hearing.
23. Dairy NZ’s report documents evidence of the progress that farmers in the Upper Waikato Catchment have made to reduce nutrients to the Waikato River as a result of developing and implementing SMPs. In particular:⁴
 - a. Mean reductions in farm nutrient losses following the successful implementation of 70% of SMP actions are estimated to be 5% for nitrogen and 12% for phosphorous (based on a sample of 594 farms).
 - b. These reduction estimates are expected to increase to 8% for nitrogen and 21% for phosphorous when all actions across all 642 SMP farms are fully implemented.
 - c. Potential load reductions on individual farms ranged from 0 to 35% for nitrogen and 0 to 73% for phosphorous, depending on the number and combination of actions implemented.
 - d. The greatest nitrogen reductions were observed for farms implementing multiple strategies involving stock exclusion from streams and optimised effluent/fertiliser application.

Fourth Topic: Method for subcatchment action plans

24. Federated Farmers sought the adoption of a method or methods to provide for the development and implementation of subcatchment action plans. It specifically sought amendments to Method LR M5 and the adoption of a modified version of Method 41 that would apply to subcatchments (as opposed to catchments).
25. During Federated Farmers’ presentation, the Hearing Panel raised concerns about the potential for conflicts between a subcatchment action

⁴ Potential reductions in farm nutrient loads resulting from farmer practice change in the Upper Waikato Catchment: SMP final call analysis dated 15 September 2015, section 4.2, page 19.

plan under Method 41 as proposed by Federated Farmers and catchment action plans under Method 41 of the RWLP.

26. Upon reflection, Federated Farmers considers that its concerns are addressed in the amendments sought to Method LR M5. Accordingly, it no longer seeks the inclusion of Method 41 and this has been deleted from the documents showing the changes sought.

Fifth Topic: FF Rule 3

27. Federated Farmers' Rule 3 proposes that farming activities/farming enterprises on properties greater than 10ha are permitted activities provided they have or obtain a nutrient benchmark.

Nutrient benchmark

28. Federated Farmers' submission defined "nutrient benchmark" as "the annual average export of nitrogen and phosphorous from the property for the *agreed benchmarking period*." (emphasis added)
29. A question raised by the Hearing Panel on 20 April 2017 was whether the terms "agreed benchmarking period" were sufficiently certain for a permitted activity rule.
30. As explained on 20 April 2017, FF Rule 3 is broadly based on Rule 11C. The benchmarking period in Rule 11C is the "annual average export of nitrogen and phosphorous from the property for the *period 1 June 2001 to 30 June 2004*." (emphasis added)
31. Federated Farmers' intention is that properties continue to be regulated on the basis of the Rule 11 benchmark and that this is extended to properties between 10 and 40ha. Federated Farmers seeks to provide for the situation where properties do not have a Rule 11 benchmark and do not have sufficient records dating back to 2001/04.⁵
32. Federated Farmers now proposes that the period of 1 March 2013 to 29 February 2016 is adopted as the benchmark period to provide for those in this situation. The amended definition is contained in the section on Rule

⁵ It is understood that many properties under 40ha do not have one, notwithstanding a requirement in Rule 11 for all properties over 4,000m² to obtain one.

3 in the documents in Appendix 1 and Appendix 2. An explanation of why the change is within scope is provided in Appendix 3.

Farming activities/farming enterprises

33. An issue that was raised during Federated Farmers' presentation was that the proposed rules apply to the use of land for "farming activities/farming enterprises." Concern was raised that this would not apply to forestry or bush/scrub.
34. As set out in the attached track changes document (Appendix 2), Federated Farmers seeks amendments to the definitions in PPC10. The amended definitions that are critical to the application of Federated Farmers' rules are:
- a. A new definition of "area" is included to clarify that it is the area on which farming activity/farming enterprise occurs and includes but is not limited to any land used for grazing, cultivation, cropping, horticulture, effluent disposal, *plantation forestry or bush/scrub*. (emphasis added)
 - b. "Farming activity" is amended to expressly include plantation forestry or bush/scrub (along with dairy, dairy support, drystock, cropping and horticulture) within the farm area.
 - c. A new definition of "farming enterprise" is proposed to mean an aggregation of land held in single or multiple ownership (whether or not held in common ownership) that constitutes a single operating unit for the purpose of farm management.
 - d. "Plantation forestry" is amended to delete the requirement that it is "not grazed by stock."
35. Accordingly, the intention is that the proposed rules will apply to plantation forestry or bush/scrub.



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