BEFORE BAY OF PLENTY REGIONAL COUNCIL

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 under clause 8B of Schedule 1 to the Act
BETWEEN	**ROTORUA LAKES COUNCIL**
	Submitter
AND	**BAY OF PLENTY REGIONAL COUNCIL**
	Plan Change 10 Proponent

MEMORANDUM OF GRANT ROBERT ECCLES

Date: 11 April 2017

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Introduction

1. This memorandum contains my response to the request made by the Hearing Panel during the presentation of my evidence at the PC10 hearing on 03 April 2017, to provide a written opinion on the following matters:

   (a) What is the relevance of the effect of PC10 on underdeveloped land in terms of the relevant statutory tests for plan changes in the RMA?

   (b) What effect does Rule LR R7 in PC10 have with regards to underdeveloped land?

   (c) What statutory weight, if any, would the Integrated Framework set out in PC10 have if PC10 were to become operative in its current form?

What is the relevance of the effect of PC10 on underdeveloped land in terms of the relevant statutory tests for plan changes in the RMA?

2. To aid in answering this question, it is necessary at the outset to set out the provisions of Section 32 of the RMA. Those provisions require the following:

> (1) An evaluation report required under this Act must—
>
> (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
>
> (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
>
> (i) identifying other reasonably practicable options for achieving the objectives; and
>
> (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
>
> (iii) summarising the reasons for deciding on the provisions; and
>
> (c) contain a level of detail that corresponds to the **scale and significance of the environmental, economic, social, and cultural effects** that are anticipated from the implementation of the proposal.
>
> (2) An assessment under subsection (1)(b)(ii) must—
>
> (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

3. PC10 aims to give effect to the existing objectives and policies in the Bay of Plenty Regional Policy Statement. The RPS contains relevant "hard edged" policy WL 3B that dictates the achievement of limits to contaminants entering catchments at risk, with point c) setting a specified amount of nitrogen discharge to Lake Rotorua[1].

4. The allocation of those contaminants is specified in Policy WL 5B that requires the specified amount of discharge to Lake Rotorua to be allocated having regard to a range of principles and considerations, including of most relevance to this discussion on underdeveloped land:

(a) Equity/fairness, including intergenerational equity;

(d) Iwi land ownership and its status, including any crown obligation;

(e) Cultural values;

(g) Existing land use

5. In terms of underdeveloped Māori land that has been returned to tangata whenua as redress for past breaches of the Treaty, the above issues are very important. This is because the redress is for past inter-generational inequity experienced by Māori. In the case of the CNIIWL land for example, there are 111,000 beneficiaries who would gain benefit from higher and better economic use of the land. That benefit would presumably manifest in social and cultural terms through opportunities for employment and economic growth.

[1] 435 tonner per annum

6. The effect of PC10 will be to make it very difficult in a consenting sense (eg forestry to dairy is non-complying) and expensive in financial terms (eg purchase of nitrogen discharge allowance) for such land to be put to any higher and better use. In turn, that has the potential to thwart the purpose why the land was returned to tangata whenua. This will presumably perpetuate inequity for future generations and would not give effect to multiple relevant aspects of Policy WL5B of the RPS as set out earlier, in particular matters (a), (d), and (e).

7. This issue also goes to RMA section 8 Treaty principles of active protection, partnership, and mutual benefit. It also goes to section 6(f) and the purpose of the RMA as set out in section 5, which contains specific reference to people and communities and cultural matters.

8. The effect of PC10 on underdeveloped land, and in particular underdeveloped Māori land, is thus in my view a very significant issue that is fundamental to consideration of the appropriateness of PC10.

9. To provide further context to the significance of the issue, Ms McGregor from Rotorua Lakes Council has assisted me to review the calculations of underdeveloped Māori land present variously in the rebuttal evidence of Ms Moletta and Mr Lamb for the Regional Council, the s32 report, the s42A report, and the Perrin Ag report. Using slightly rounded numbers, our analysis concludes that:

   (a) There is 15,000 ha of Māori land[2] in the Lake Rotorua groundwater catchment (38% of total catchment area)

   (b) 11,000ha of that 15,000ha is Māori Freehold Title, of which **5,600ha (48%) is underutilised** (Perrin Ag report + 935ha class 6 forestry as per Ms Moletta's rebuttal)

[2] Māori Freehold Title and Settlement land in General Title

(c) 4,000ha is settlement land in general title, and 3,100ha of that is owned by CNI. **2,500ha (79%) of the CNI 3,100ha is under-utilised** (includes forestry on class 6 as per Ms Moletta's rebuttal)

Thus of all the Māori land in the catchment, approximately 8000ha (or 53%) is underutilised. This figure is also relevant to the effect of proposed Rule LR R7 which is discussed later in this memorandum (see paragraph 15 onwards).

10. Section 11.6 of the section 32 report discusses underdeveloped Māori land. It outlines constraints to development of Māori land and makes the following comment[3]:

> Because of these constraints, Objective 16 and Policy IW 1B of the RPS seek to enable the development of multiple-owned Māori Land. Furthermore, Policy WL 5B seeks to ensure that regard is given to Iwi land ownership and its status including any Crown obligation, for example when considering nitrogen allocation.

11. Despite this statement, the section 32 report does not address the matter of underdeveloped Māori land that has been returned to tangata whenua on a redress basis as part of settlements under the Treaty of Waitangi, as I have set out above.

12. A discussion then ensues on the impacts of Rule 11 on Māori land development. I note that the section 32 report refers to a report prepared in 2009 by the then Environmental Management Services that identified some potential inequalities associated with Rule 11:

> Where land has not been developed intensively, Rule 11 does not 'credit' landowners for the extent to which a property has minimised the amount of nitrogen discharged.
>
> Rule 11 prevents intensification of the land and therefore constrains future economic opportunities.

[3] See page 120

> The report questions whether Rule 11 properly recognises and provides for the relationship of Māori with their ancestral lands.

13. I note the above as it indicates that even when Rule 11 was introduced there were question marks over its appropriateness with regards to Māori land. The issue of nitrogen allocation mechanisms and how they affect underdeveloped Māori (and non-Māori) land is clearly not new.

14. In light of all the above, and from my review of the s32 analysis for PC10, and given the requirements of s32 set out above, my view is that the social and cultural effects of PC10 have not been addressed in the section 32 analysis in a manner that adequately corresponds to their scale and significance. The result is that PC10 does not in its current form give effect to BOPRPS Policy WL 5B.

What effect does Rule LR R7 in PC10 have with regards to underdeveloped land?

15. Rule LR R7 appears to be a method that in part attempts to address this issue. Rule LR R7 is important because it is presented by BOPRC as the primary mechanism to address the issue of underdeveloped land. BOPRC estimates that this rule impacts 2,800 ha of land, including 1,800 of Māori Freehold Title[4]. Based on the calculations set out in paragraph 11 of this memorandum this is a small proportion compared with 8000ha of Māori underdeveloped land[5]. In my view the Rule as currently drafted contains a number of limitations that hinder its effectiveness and efficiency, and it thus falls short of meaningfully addressing the issue. Those limitations include:

    (a) Nitrogen loss capped at 71% of the nitrogen loss rate for the Overseer drystock reference file; and

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4 Page 22, Annex 1: Land receiving an increased allocation to the bottom of the Drystock Range of BOPRC Memorandum filed 22 March 2017.

5 This contrasts with Mr Lambs calculation of 2,800ha impacted by rule LR R7, of which 1,800 is Māori land - refer page 22 (Annex 1) of BOPRC memorandum dated 22 March 2017, "Land receiving an increased allocation to the bottom of the Drystock Range"

(b) An inability to transfer nitrogen loss entitlement either to or from the property/farming enterprise[6]; and

(c) No increase in effective area or nitrogen inputs from 29 February 2016.

What statutory weight, if any, would the Integrated Framework set out in PC10 have if PC10 were to become operative in its current form?

16. The Integrated Framework is neither an objective (no new objectives are proposed by PC10), a policy, nor a method and is not referred to in any of the proposed policies or methods (Rules). It is instead set out in the Explanation section (Table LR 1) that precedes the policies and methods.

17. In any plan prepared under the Resource Management Act, the explanation section provides important context to the objectives, policies and methods. In this case, the Explanation section clearly sets out that the Integrated Framework provides the basis for the proportional nitrogen reductions being implemented through the rules and for the allocation methodology.

18. The context that the Integrated Framework provides would become important for decision makers when considering the merits of resource consent applications under the rules to be inserted by PC10, and the consistency or otherwise of any such application with the relevant provisions of the plan as required by s104(1)(b)(vi) of the RMA. In my view the Integrated Framework would, provided it is read in context with and considered alongside the relevant policies and methods, have strong statutory weight. On its own however, the Integrated Framework in its current location in the PC10 document would have little statutory weight.

19. To ensure that the Integrated Framework would hold meaningful statutory weight regardless of whether or not it is read in conjunction with other

[6] BOPRC Counsel stated that this trading is limited only until 2022 however this is not apparent in the drafting.

provisions of the plan, my view is that the most appropriate course of action would be to write the framework into the Plan Change as a policy. Any such policy, while clearly setting out the Integrated Framework provisions, would need to recognise the need for flexibility within the overall nitrogen discharge cap of 435tN/yr.

20. If the hearing panel were minded to do so, I suggest that a new policy could be worded as follows (or similar) – note that the final version of any policy would have Table LR 1 inserted where referenced below:

> LRP 1A To ensure that the nitrogen load to Lake Rotorua is managed in accordance with the Lake Rotorua Integrated Framework set out below, recognising that flexibility exists across the sector allocations as land use change occurs to achieve the sustainable lake load of 435tN/yr.
>
> (Insert Table LR 1 here)

21. Further, existing Policy WL 6B of the BOP RPS could be amended to reference the Integrated Framework. Such amendment is outside of the scope of PC10, however I understand it is within the ambit of the hearing panel to make recommendations to BOPRC as to consequential amendments to other plans or policy statements that may be appropriate arising from PC10.

Dated this 11th day of April 2017

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Grant Eccles