

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal pursuant to clause 14(1) of the
First Schedule of the Act

BETWEEN **FEDERATED FARMERS OF NEW ZEALAND
INC**

Appellant

AND **BAY OF PLENTY REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
A PROPOSED CHANGE TO A REGIONAL WATER AND LAND PLAN**
Clause 14(1) of the First Schedule, Resource Management Act 1991
25 September 2017

To: The Registrar
Environment Court
Auckland

Federated Farmers of New Zealand Inc ("Federated Farmers") appeals against a decision of Bay of Plenty Regional Council on the following plan change:

Plan Change 10 to the Bay of Plenty Regional Water and Land Plan

Federated Farmers made a submission on that plan change.

Federated Farmers is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

Federated Farmers received notice of the decision on 15 August 2017.

The decision was made by Bay of Plenty Regional Council.

The decisions (or parts of the decision) that Federated Farmers is appealing are:

The entire decision to adopt Plan Change 10 (as amended by the Hearing Panel) i.e. the decision as it relates to the introduction and all of the objectives, policies, methods, rules, definitions and schedules.

1. Plan Change 10 ("PC 10") is described as a complex but interrelated framework¹ and an "integrated and holistic package"² with each part of the plan change relying on the other. As explained in the decisions report, there are a series of basic concepts (or conceptual methodologies) that are interrelated, need to be considered as a package and underpin the provisions of PC10.³
2. Federated Farmers has fundamental concerns with the underlying concepts, the process to develop those concepts and the science and other economic evidence that support those concepts.
3. On the basis that PC10 is a package of interrelated provisions founded on concepts that Federated Farmers fundamentally disagrees with, it is not possible to simply tinker with specific provisions of the plan change to address Federated Farmers' concerns. Instead, what is required is an alternative framework and/or substantive changes (as proposed in Federated Farmers' submission both in terms of specific track changes and by reference to the concerns raised in the detailed narrative provided in that submission).
4. In summary, Federated Farmers considers that substantive amendments to the introduction, objectives, policies, methods, rules, definitions and schedules are required to achieve a comprehensive alternative regulatory and non-regulatory framework for integrated sub-catchment nutrient management that does not involve allocation of nitrogen to an individual property level.

¹ Decision at paragraph 688.

² Decision at paragraphs 520 and 687.

³ Decision at paragraph 139.

5. For all of these reasons, Federated Farmers opposes the decisions report in its entirety and appeals every provision. Federated Farmers seeks an alternative framework as contemplated by its submission.
6. To illustrate the scope of this appeal but without limiting the generality of this appeal, a summary of the key findings in the decisions report that Federated Farmers opposes are set out below. Again without limiting the generality of the appeal, Federated Farmers' position in respect of specific decisions in Part V of the decisions report is set out in Schedule 1 to this notice of appeal.

Key findings

7. A summary of the key findings in the decisions report is set out below. For the avoidance of doubt, this is intended to illustrate the comprehensive nature of Federated Farmers' appeal and it not intended to narrow or limit the appeal which is on PC10 in its entirety.
8. The key findings are (all of which are opposed by Federated Farmers):
 - a. The approval of the Integrated Framework as a non-statutory method and a statement of how PC10 gives effect to policies WL 6B(a) and (b) of the RPS. The decision that the inclusion of the Integrated Framework in the introduction of PC10 is consistent with sections 67(2)(b) and (c) of the RMA to show how the Integrated Framework underlies the policies and rules of PC10 and it would be consistent with section 67(h), being other information that is required for the purpose of the Regional Council's functions, powers and duties under the RMA.⁴
 - b. The conceptual methodologies (e.g. sustainable lake load, timeframe, TLI, integrated framework, incentives fund, Overseer, reference file methodology, allocation methodology, use of NMPs and transfer of NDAs) that underlie PC10 were sound, robust and appropriate.⁵

⁴ Decision at paragraphs 98, 101 and 102.

⁵ Decision at paragraphs 104 to 138.

- c. The approval of the use of hybrid section 9 and section 15 rules, a property based approach and (for the most part) regulation on the basis of effective area (as opposed to whole property) to address land use activities with the aim of constraining nitrogen loss below the root zone as estimated by Overseer.⁶
- d. The sustainable lake load, or limit, was fixed by the Oturoa Agreement and embedded in the RPS by Policy WL 3B.⁷
- e. The StAG process was acceptable, upheld the requirements in the RPS and Oturoa Agreement and the consultation process with Maori was adequate to meet the statutory requirements.⁸
- f. The science that underpins PC10 and its focus on controlling nitrogen losses to the catchment to reduce the long term input of nitrogen to the Lake to 435t/N/yr is sound and appropriate.⁹
- g. Council carried out extensive economic analysis at a farm, district, regional and national level and that confirmed that PC10's proposed nitrogen allocation approach would be the most appropriate approach.¹⁰
- h. A regulated rule framework to implement a nitrogen allocation regime would be the most appropriate way of achieving the necessary nitrogen reductions from the pastoral sector.¹¹
- i. It is appropriate to give some measure of relief for under-utilised Maori land by providing for up to 800ha of land in Maori tenure to be converted to low impact pastoral farming.¹²
- j. The science review was "very unlikely to change" the sustainable nitrogen load of 435t/yr, Rotan was not sufficiently robust to support any form of catchment planning and the alternatives proposed by Federated Farmers, the Lake Rotorua Primary Producers' Collective

⁶ Decision at paragraphs 157 and 158.

⁷ Decision at paragraph 225.

⁸ Decision paragraphs 292 and 293.

⁹ Decision at paragraph 333.

¹⁰ Decision at paragraphs 356 to 359.

¹¹ Decision at paragraph 366.

¹² Decision at paragraph 401.

and Lachlan McKenzie would not give effect to the RPS, Objective 11 of the RWLP and the NPS-FM.¹³

- k. The RPS policies, integrated framework and Objective 11 of the RWLP were not within scope of PC10.¹⁴
- l. The decision to reject the alternative frameworks proposed by other submissions and the decision that of all of the approaches before the Hearing Panel, the hybrid approach proposed in PC10 is the most appropriate means of achieving Objective 11 of the RWLP, giving effect to the objectives and policies of the RPS and the higher level documents.¹⁵
- m. The use of Overseer to set NDAs and the use of NMPs as an enforcement tool are the most appropriate regulatory tools to achieve the sustainable catchment load of nitrogen by 2032.¹⁶ This included the following decisions:
 - i. The catchment load needs to be reduced to 435t/N/yr by 2032 so the “size of the cake” remains as it was when StAG discussed how it might be allocated.¹⁷ This involved rejecting Federated Farmers’ (and others’) criticism that the StAG process only decided how to divide the cake as opposed to the size of the cake itself. It also relied on the decision that the catchment nitrogen load needs to be reduced to 435t/N/yr by 2032.
 - ii. It is appropriate to use the NMPs as the point of compliance, the level of detail in the NMPs is appropriate¹⁸ and the use of a three year rolling average for enforcement should not be mandatory as Council needs to be able to take enforcement action for any significant breach of requirements of the NMP (and with it the NDA) at any time.¹⁹

¹³ Decision at paragraph 433.

¹⁴ Decision at paragraph 434.

¹⁵ Decision at paragraphs 434, 439, 445, 692 and 693.

¹⁶ Decision at paragraph 479.

¹⁷ Decision at paragraph 461.

¹⁸ Decision at paragraph 474.

¹⁹ Decision at 478 and 479.

- n. The reference file system is a “reasoned and quite elegant way” of dealing with changes to estimated farm nitrogen leaching through changes in Overseer versions.²⁰ This included the decision not to adopt the alternative approach put forward by Mr Allen on behalf of Dairy NZ/Fonterra.²¹
- o. Prior to 2022, transfers should be limited to the Incentives Scheme. After 2022 transfers should be limited to between farming enterprises and a controlled activity.²² This includes the omission in the decision to consider the effectiveness of the Incentives Scheme or any review of the Incentives Scheme e.g. to allow the scheme to purchase land (as opposed to nitrogen) as suggested by Federated Farmers and several other submitters.
- p. The agreed position between the Regional Council and District Council is the most appropriate way to address and manage the potential impacts resulting from a change of land use from rural to urban²³ and the consequential decision to amend Policies LR P18 and P19, clause E of Schedule LR One and Method LR M1.

The reasons for the appeal are as follows:

- 9. Federated Farmers considers that PC10 is a flawed and risky approach for attempting to achieve the RWLP TLI objective and such approach is very likely to come at unnecessary and irreversible cost to the Rotorua farming (and wider) economy.
- 10. Federated Farmers considers that substantial amendments to PC10 are required to facilitate a comprehensive and integrated regulatory and non-regulatory framework for nutrient management that will achieve the water quality goals for least economic and social cost to the community.

National Policy Statement for Freshwater Management (“NPS-FM”)

- 11. The NPS-FM must be given effect to. The RPS pre-dates the NPS-FM and does not give effect to it. Federated Farmers considers that

²⁰ Decision at paragraph 466 and 479.

²¹ Decision at paragraph 465.

²² Decision at paragraph 485 and 486.

²³ Decision at paragraph 513.

implementation of the NPS-FM by locking historic nitrogen targets into PC10 (and by default other National Objectives Framework “NOF” attribute states) and not allowing them to be considered as part of the consideration of NOF attributes by the Water Management Area (“WMA”) community group, does not give effect the NPS-FM.

12. Federated Farmers considers that PC10 ought to enable the NPS-FM to be given effect to.
13. In contrast to PC10, the alternative framework proposed by Federated Farmers enables the NPS-FM to be given effect to in that it:
 - a. Provides for an integrated assessment of all of the NOF water quality attributes that are contemplated by the NPS-FM.
 - b. Provides for an iterative community process where the values, attributes, objectives and limits for water quality and quantity can be considered in the round.
 - c. Is not constrained by historical decisions or limitations (unlike StAG or PC10) and can be informed by the upcoming science review.
14. A consistent theme during the Council hearing was a lack of consultation and community involvement. All sectors of the community expressed their concerns about not having an opportunity to be heard or about having limited or constrained involvement. Federated Farmers considers that the robust community process anticipated by the NPS-FM is the only way to ensure community support of the resulting nutrient management framework (and, in turn, a workable and effective solution).

Regional Policy Statement

15. Federated Farmers’ view is that PC10 does not give effect to the Bay of Plenty Regional Policy Statement (“RPS”), or if it does, Federated Farmers’ alternative framework better gives effect to the RPS.
16. Federated Farmers considers that “giving effect” to the RPS does not require the imposition of stringent nitrogen reduction rules on the rural sector at this stage to lock in a trajectory to achieve a limit of 435t of nitrogen by 2032. To do so would give paragraph (c) of Policy WL 6B

priority over paragraphs (a) and (b) and would fail to adequately consider the other water quality policies in the RPS. It would also impose the responsibility for ensuring that discharges do not exceed 435t on the rural sector, when Policies WL 5B and WL 6B(c) do not discriminate in this way.

17. In contrast to PC10, the alternative framework proposed by Federated Farmers gives effect to the RPS and achieves harmony both within and among the water quality policies as follows:
 - a. The Rule 11 benchmark (or something similar) is used to prevent nitrogen discharges from increasing (i.e. a “regulatory backstop” to ensure we do not regress during 2017 to 2022).
 - b. Rural activities implement industry agreed good management practice to do what is reasonable, practical and affordable to reduce nitrogen (the rural sector’s commitment in Policy WL 6B(a)).
 - c. In certain circumstances, resource consents may be sought for activities that increase nitrogen discharges, giving effect to Policy WL 4B.
 - d. Sub-catchment action plans are prioritised to target hot spots and to provide for an integrated approach (in terms of nutrients, land uses and source/transport/sink pathways).
 - e. The 2017 science review is undertaken to identify and confirm the most effective combination of sustainable nitrogen and phosphorous loads to the Lake to achieve the TLI (thereby giving effect to all paragraphs of Policy WL 3B and making the improvement of Lake water quality the overarching objective).
 - f. The implementation of the NPS-FM for the Rotorua Lakes WMA is the stage at which the science, community values, targets, allocation, methods, rules and public/private partnerships are evaluated.
18. Federated Farmers considers that this is consistent with the Oturoa Agreement, which focuses on the 2022 intermediate catchment reduction target and emphasises the importance of robust and regular science, policy and planning reviews.

Conceptual methodologies

19. As explained above, PC10 has been determined by decisions on conceptual methodologies that in turn underpin and inform every provision. Federated Farmers opposes those conceptual methodologies, as well as all of the provisions of PC10, on the basis that they:
- a. Do not achieve sustainable management or give effect to Part 2 of the RMA.
 - b. Does not comply with sections 65, 66, 67 and 68 of the RMA.
 - c. Do not give effect to the NPS-FM or RPS.
 - d. Will not achieve the Lake water quality objective in the RWLP.
 - e. Are not consistent with Council's powers, functions and duties.
 - f. Are contrary to the Oturoa Agreement.
 - g. Are contrary to the current science and science agreements reached during the hearing.
 - h. Are not supported by the economics or a robust section 32 and/or section 32AA analysis, and are not the most appropriate way to achieve the purpose of the Act.
 - i. Were developed through a flawed community consultation process.
20. Without limiting the generality of its opposition or the reasons for its opposition, the concepts opposed and reasons for that opposition are summarised below (and explained in more detail in Federated Farmers' submission).

Integrated framework

21. Federated Farmers' opposition to the integrated framework includes that it is premised on flawed decisions made on the other concepts (including the allocation methodology), it is unlikely to achieve the catchment reductions sought, it is unlikely to achieve the Lake water quality objective, it relies on out of date science and it is likely to impose unnecessary and unreasonable costs on landowners and the community.

22. Federated Farmers opposes locking in a numeric framework that is reliant on a particular version of Overseer and without consideration of the impact of or reasonable accommodation for version changes. The integrated framework is also flawed because it relies on reductions from other initiatives (such as the incentives fund) that are flawed and require review.
23. The integrated framework was developed prior to many fundamental developments including:
 - a. Overseer version change from 5.4 to 6.2.
 - b. The Lake reaching the TLI target.
 - c. Research indicating the main driver of Lake algal dynamics is the internal nutrient load.
 - d. The results of alum dosing indicating the Lake may now be phosphorous or dual nutrient limited.
 - e. Data indicating the potential significance of flood flow particulate nutrients.
 - f. Results disaggregating legacy groundwater base flow nutrients by sub-catchment.
 - g. Updates to the Rotan model in October 2016 (which included a conclusion that attenuation was 42% on average (contrary to a previous assumption of 0%) and varied across the sub-catchments).
24. Federated Farmers' submission proposes a modified framework for integrated nutrient management that is truly integrated and achieves or complies with the matters listed in paragraph 19 above.

Sustainable lake load and timeframes

25. Federated Farmers' primary opposition to the sustainable lake load of 435t/N/yr by 2032 is that there is insufficient science and evidence to rely on this load as the sustainable lake load and to require irreversible land use change now to achieve this load. Further, doing so will likely result in significant economic and social costs. Federated Farmers' view is that there are also no obligation to cement the sustainable load now and that

the RPS and NPS-FM (and any other statutory or legal obligations) can be given effect to (or achieved) without the need to adopt rules to regulate rural land use activities at this stage to achieve 435t/N/yr by 2032.

26. Given that the Lake has achieved the TLI, the science witnesses agreed that the balance of nitrogen and phosphorous reductions might have changed and that a science review is scheduled for 2017, it is not appropriate or necessary to confirm 435t/N/yr as the sustainable load underpinning PC10 and, at this stage, to implement rules to achieve it by 2032.
27. Federated Farmers also considers that a more appropriate “underlying concept” is the TLI, as it is the measure of water quality that has been set as the objective for Lake Rotorua (subject to the outcome of the implementation of the NPS-FM, science review and plan review).

Overseer

28. Federated Farmers supports the use of Overseer as an on-farm decision support tool. While Overseer may also be reasonably used for direction of change (expressed as rolling averages), it was not intended to be used as a regulatory tool (as proposed in PC10) and Federated Farmers does not support its use in this way. Federated Farmers’ concerns are set out in more detail in its submission but they include that Overseer is a model (and relies on various assumptions, estimates and extrapolations), does not provide for attenuation, does not account for flood flows, version changes can (and do) have significant implications for Overseer numbers and there are many mitigations not recognised by Overseer.
29. Federated Farmers not only opposes the adoption of Overseer (as proposed by PC10) but also all of the methodologies that flow from it e.g. three year rolling average, reference files, version changes etc. The Rotan model is similarly flawed as it relied on inputs from Overseer.

Allocation methodology

30. Federated farmers considers that the RPS and Oturoa Agreement do not require allocation to a property level but rather the achievement of a catchment target, with farmers doing what is reasonable, practicable and affordable and with robust and regular science, policy and planning

reviews. Federated Farmers also considers that it is premature to allocate the 2032 nitrogen target to a property level for the reasons set out above (and in its submission). In addition, allocations based on Overseer are flawed for the reasons that Overseer is itself flawed (including the issues set out above).

31. Federated Farmers considers that the science indicates strong sub-catchment patterns (e.g. attenuation, flood flows, base flow (streams carrying legacy dissolved nutrients from groundwater), groundwater travel times). A sub-catchment approach underpinned by science and other evidence is preferable to the allocation approach in PC10, which relies on averaging, aggregating and allocating total catchment nutrient loads to individual properties.
32. Federated Farmers considers that these sub-catchment differences support its proposal (explained in more detail in its submission) for the development of nutrient reduction targets by sub-catchment, flow source or pathway and by contributing sectors (including urban).
33. The sub-catchment complexities mean that the prescriptive, input based, standardised and “blanket” approach adopted in PC10 is not appropriate and are some of the reasons Federated Farmers seeks a different balance between rules and methods e.g. a more sophisticated and efficient approach to prioritising interventions and investments, both public and private.
34. Federated Farmers considers that allocation should be considered as part of a community process (the Rotorua Lakes WMA provides an opportunity), informed by the science review and supported by freshwater accounting for all sources and contributors of nutrients.

Nutrient management plans (“NMPs”)

35. The use of farm plans as a “point of compliance” with Nitrogen Discharge Allowances (“NDAs”) and reliance on Overseer in the regulatory framework is not supported. Farm plans that are informed by sub-catchment planning, tailored for the specific farm and informed by industry agreement good management practices are supported.

36. The fundamental flaws with the NMPs in PC10 include that they are premised on NDAs (which are flawed due to factors such as their reliance on 435t/N/yr as the sustainable load, Overseer and allocation, as set out above), the NDAs are not reasonably achievable with current technology and will result in significant and irreversible harm to individual farms and the wider catchment economy and community. Insufficient flexibility is provided for factors such as changes in economic and climatic conditions. There is also no recognition of or tailoring towards the particular water quality issues and sub-catchment factors e.g. farmers are required to achieve NDAs and identify and mitigate phosphorous (with arguably no limitation on the extent of the efforts required).

Transfer and incentives fund

37. Federated Farmers considers that the current incentives framework is flawed (and this results in a flawed approach to transfers and the reliance on incentives fund nitrogen reductions in PC10). This includes the limitation of the \$40m fund to purchasing 100 tonnes of nitrogen (as opposed to, for example, allowing it to consider a range of potential interventions to improve Lake water quality, as contemplated by the funding deed). Federated Farmers considers that a review of the fund is required (and is contemplated in the funding deed) with a view to potentially expanding the focus and this review could potentially be informed by the outcome of the science review.
38. A key factor driving PC10 and the decision to allocate the 435t nitrogen target now, is that the assumption that the incentives funding will be lost after 2022 and the funding is needed to achieve the 2022 managed reduction target.²⁴ Federated Farmers considers that this is a flawed analysis given that the incentives fund has very narrow terms of reference (i.e. it can only purchase nitrogen) and that farmers cannot comply with their 2032 NDAs (and would need to comply in order to sell any nitrogen over an above their NDA to the incentives fund).
39. There is a real risk that under PC10 the required reductions will not be achieved because there is no nitrogen sell because farmers cannot achieve their 2032 targets on the basis of present farming technology. A

²⁴ Decision at paragraph 332.

less risky approach would be to review the incentives fund to provide an expanded portfolio of options and to adopt a plan change that does not allocate the 2032 target at this stage.

40. Sub-catchment factors and changes in the science necessitate a broader portfolio of interception/mitigation opportunities, public and private investments and interventions. Federated Farmers considers that more flexibility, trading and transfer mechanisms are required. The time to 2022 provides an opportunity to explore and develop options.

Hybrid rules

41. Federated Farmers has concerns about the foundation of PC10 on hybrid section 9 and section 15 rules and the implications that has for how the rules are drafted and enforced. Federated Farmers considers that its alternative framework addresses these concerns by not allocating nitrogen to a property level and by adopting a tiered and integrated approach for achieving the TLI (as summarised in Schedule 2 to this notice and explained in more detail in its submission).

Science review

42. PC10 is premised on science that has not been properly, independently or robustly reviewed since it was first proposed in the 1980s. Since that time (and particularly more recently) there have been significant shifts in our understanding of the Lake dynamics, including the significance of internal bed nutrients, flood flow particulate nutrients, sub-catchment attenuation factors and a potential shift of phosphorous (or dual nutrient) limitation in the Lake. All of this is contrary to earlier understanding that achieving the TLI objective principally required reducing catchment nitrogen leaching at source, principally from the farming sector.
43. Federated Farmers considers that a robust science review ought to be carried out and the 2017 science review provides that opportunity. This ought to be prioritised to confirm the sustainable load, the development of sub-catchment actions plans ought to be prioritised to understand sub-catchment patterns and the NPS-FM community process ought to be enabled to identify the appropriate nutrient management framework.

44. The need for a comprehensive science review was confirmed by the science experts in the joint witness statement. The scope of the science review ought to be wide enough to address the matters raised in the science witness joint statement as well as additional issues raised in this notice and Federated Farmers' submission such as the internal load of both nitrogen and phosphorous.
45. The process for the review also ought to be robust. This includes matters such as agreed terms of reference, establishment of a community consultation group that the water quality technical advisory group reports back to, international peer review and workshopping of the results of the science review by the technical advisory group.

Economics and section 32

46. The economic evidence upon which PC10 is based is flawed and weak. This includes flaws in assumptions and modelling as well as incorrect or poor understandings of farm systems and practices (e.g. assumptions about debt, cash flows from forestry and drystock farming practices).
47. The economic evidence suggests that the 2022 catchment intermediate target is closely aligned with industry agreed good management practices and is likely to be reasonably achievable for most farmers (assuming no changes in Overseer and other assumptions that underlie this analysis). In contrast the 2032 targets require significant farm system changes with severe impacts on operating profit. Such changes are beyond good management practices and accordingly beyond the requirements in RPS Policy WL 6B(a) that farmers do what is reasonable, practical and affordable.
48. The Hearing Panel accepted that the 2032 targets are not achievable on the basis of present farming technology. However, it concluded that they may be less daunting in 10-15 years' time.²⁵ The fundamental issue for farmers is that in order to obtain resource consent they need to demonstrate now that they will achieve their 2032 NDAs (or at least a pathway to achieve them). If there is no technology available at present for them to achieve these targets, they have no means of showing that

²⁵ Decision at paragraph 352.

they will be achieved and arguably no ability to obtain consent. Under PC10 their activity would become non-complying and (as explained in more detail later on in this notice) there is arguably no consenting pathway for such activity.

49. The economic and social impacts of all of this are significant. However, PC10 fails to take this into account and an assumption that technology will bridge the cap is not appropriate.
50. The section 32 report is flawed and does not meet the statutory test. There has been no section 32AA report for the significant changes that have been made since PC10 was notified.

Wastewater Treatment Plant

51. PC10 is premised on an assumption about the discharges from the Wastewater Treatment Plan ("WWTP") with little explicit reference to urban discharges or the WWTP. The decisions version of PC10 has been tinkered with to provide vague or veiled references in policies and methods to provide potential allowances for increases in nitrogen discharges from the WWTP as rural land is subdivided. Federated Farmers opposes this approach.
52. Whilst acknowledging the District Council's concerns, Federated Farmers considers that future decisions about allocation must be transparent and informed by a robust science review, sub-catchment information and planning, and appropriate community engagement across the full range of values and objectives, including for sustainable management and development of the WWTP.

StAG

53. Federated Farmers considers that the collaborative community process that was intended to be adopted and implemented through StAG was fundamentally flawed. Not only has there been strong opposition to and concerns raised about that process from a consultation and representation perspective, but also there were serious flaws with StAG in terms of the terms of reference and role of StAG, including the options that were available for consideration and information or evidence available for them to base their decisions.

54. The implication is that the conceptual methodologies that resulted from the StAG process are flawed and unreliable.

Federated Farmers seeks the following relief:

55. Federated Farmers seeks an alternative framework (as contemplated by its submission) to address the concerns raised in its submission and in this notice of appeal. This includes:
 - a. Substantive amendments to the introduction, objectives, policies, methods, rules, definitions and schedules of PC10 to provide a different balance of regulatory and non-regulatory methods.
 - b. Amendments to the introduction, objectives, policies, methods, rules, definitions and schedules of PC10 as described in this notice of appeal (particularly in Schedule 1) and in its submission.
 - c. Amendments to achieve the framework as broadly described in Schedule 2 of this notice.
 - d. Any consequential amendments necessary to give effect to relief sought or address the concerns raised.
56. In addition, Federated Farmers seeks such other or additional relief necessary to give effect to the relief sought or to address the concerns raised by Federated Farmers in this notice of appeal and in its submission.

Federated Farmers attaches the following documents to this notice:

- (a) A copy of Federated Farmers' submission and further submission.
- (b) A copy of the relevant decision.
- (c) A copy of the Panel Recommendations on Plan Change 10 as track changes.
- (d) A list of names and addresses of persons to be served with a copy of this notice.



Nikki Edwards
For Federated Farmers

25 September 2017

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Schedule 1: Federated Farmers' position on specific provisions discussed in the decisions report

57. Federated Farmers' position on the specific provisions discussed in section V of the decisions report is set out below.

Introduction to the plan change

58. The Hearing Panel decided not to make the amendments to the introduction of PC10 that were sought by Federated Farmers, the Lake Rotorua Primary Producers' Collective ("Collective") and Lachlan McKenzie because it decided that their alternative proposals would not meet the 435t/N/yr catchment load by 2032.²⁶
59. The Hearing Panel made "a number of minor amendments" to the introduction to add to the certainty and clarity of PC10.²⁷ Federated Farmers does not consider that these amendments address the concerns raised in its submission and considers that something more radical than "minor tweaks" is required i.e. an alternative planning framework.
60. Federated Farmers supports the Hearing Panel's conclusion that the introduction should not be amended to include references of the NPS-FM, as proposed in version 7 of PC10. However, it considers that the amendments do not go far enough because a possible interpretation of the remaining sentence is that PC10 implements the NPS-FM for nitrogen (which is disputed).
61. Federated Farmers considers that attribute states cannot be introduced into a plan until the NPS-FM has been implemented. Federated Farmers considers that the NPS-FM cannot be partially implemented for nitrogen through PC10 for reasons including that to do so precludes the community process anticipated by the NPS-FM, predetermines other attribute states, relies on inadequate consultation that occurred several years (or decades) ago, relies on out of date science and does not comply with the NPS-FM.

²⁶ Decision at paragraph 523.

²⁷ Decision at paragraph 523.

62. Federated Farmers seeks substantive amendments to the introduction as detailed in its submission.

Objectives

63. The Hearing Panel decided that it was not necessary to repeat objectives (and policies) that already existed within the planning framework.²⁸
64. Federated Farmers seeks the inclusion of relevant objectives, policies and methods from the RPS and RWLP, as set out in its submission. Federated Farmers considers that the objectives are within scope of the plan change to the extent that they are relevant to the approach proposed in the methods and rules.
65. Federated Farmers also seeks the inclusion of two new objectives to give effect to the RPS objectives and policies about rural land use.

Policy framework

66. Federated Farmers does not support the policy framework, which is premised on the decision that implementing a nitrogen allocation regime would be the most appropriate way of achieving the necessary nitrogen reductions from the pastoral sector.²⁹
67. The Hearing Panel has made minor amendments to the policies to attempt to partly address various concerns raised by a range of submitters. As explained above, Federated Farmers does not consider that tinkering with the policies addresses its concerns due to the integrated nature of PC10 and Federated Farmers' disagreement with the underlying concepts.
68. Federated Farmers seeks substantive amendments to the policies as set out in its submission.

Policies LR P1 and P5

69. Policies LR P1 and P5 relate to the purpose of nitrogen reductions. These policies have been "tinkered" with to clarify that they will only "assist" with achieving the 435t nitrogen target. Federated Farmers' submission seeks substantive amendments to these policies to shift the focus of the policies

²⁸ Decision at paragraph 532.

²⁹ Decision at paragraph 525.

from 435t/N/yr to achievement of the TLI (which is the measure of water quality). It also opposes allocation to a property level but provides for the potential for allocation of catchment managed reduction targets.

70. The reason for “tinkering” with the policies is that the Hearing Panel sought to partly address submissions made by Lachlan McKenzie, the Collective and Federated Farmers that PC10 may assist (but in itself would not achieve) the 435t nitrogen target.³⁰ By “tinkering” with these policies, the Hearing Panel fails to address the underlying issue (being the flawed concepts upon which PC10 is based) and instead limits the focus of the policies on farming activities and the 435t nitrogen target.
71. As set out in Federated Farmers’ submission, Federated Farmers seeks a “whole of catchment” approach that takes into account all sources of nutrients to the Lake and not simply nitrogen from farming activities. It seeks the adoption of well-resourced sub-catchment action plans to gather information, identify mitigations and coordinate actions. Contrary to the amendments to Policy LR P2, it does not seek (or support) the imposition of phosphorous mitigations on properties through regulated NMPs.
72. Federated Farmers considers that a flaw in the Hearing Panel’s approach to PC10 versus the alternative framework proposed by Federated Farmers (and other submitters) is the Hearing Panel’s decision that PC10 will only “assist” with achieving the 435t nitrogen target and the decision to dismiss other alternatives because they do not achieve the 435t nitrogen target.
73. Federated Farmers considers that its alternative framework assists with achieving the 435t nitrogen limit but does so in a different way. Its framework continues the downward trajectory in nitrogen, provides for the science review, enables the NPS-FM to be implemented and provides for a “stock take” post 2022 to re-assess the target and evaluate progress, at which time rules can be adopted to allocate the 435t nitrogen limit if that is determined appropriate and necessary (this process is explained in more detail in Schedule 2 and in its submission).

³⁰ Decision at paragraphs 541 and 564.

Policy LR P2

74. Federated Farmers does not support the decision to substantively amend Policy LR P2 to require the management of diffuse and point source discharges of phosphorous.³¹ In its submission, Federated Farmers sought amendments to require the reduction of phosphorous to support the achievement of the TLI, to support an integrated dual nutrient approach and to monitor this target through science and policy reviews. Central to that approach were whole of catchment (e.g. farming, forestry and urban) action plans to (inter alia) target hot spots as well as tailor and coordinate mitigations.
75. Federated Farmers does not support the regulation of phosphorous through NMPs or the consideration of phosphorous mitigations in isolation from other mitigations and sub-catchment actions. However, this is the outcome of the decisions report. Instead, Federated Farmers seeks the identification of critical source areas and reasonable management and/or mitigation of phosphorous through collective and coordinated actions in sub-catchment action plans that look at all nutrients and sources as well as transport and sink pathways.

Policy LR P3

76. Policy LR P3 is described as the “base position” from which the rest of the policies, methods and rules originate.³² Federated Farmers’ opposition to this policy is that it is premised on the concepts that underlie PC10 (which it considers are flawed).
77. Federated Farmers considers that Policy LR P3 requires significant amendment and not simply a “tinker.” As explained in detail in its submission, Federated Farmers seeks to amend Policy LR P3 by removing all references to nitrogen sustainable loads, Overseer and the Integrated Framework. It seeks to re-focus this “foundation policy” on best science and information, integrated catchment models and sub-catchment strategies and coordinated actions to inform nutrient reduction strategies.

³¹ Decision at paragraph 548.

³² Decision at paragraph 549.

Policy LR P4

78. Policy LR P4 again reflects Federated Farmers' fundamental disagreement with the concepts underlying PC10. Federated Farmers supports a science review and implementation of the NPS-FM. The primary purposes of Federated Farmers' alternative framework include ensuring that a robust science review is undertaken, that irreversible land use change is not forced upon landowners in the meantime and the NPS-FM is able to be given effect to.
79. Federated Farmers seeks fundamental changes to Policy LR P4 to reflect this position (as set out in more detail in its submission). Accordingly, the decision to adopt the slight modifications to the notified version of Policy LR P4 does not address Federated Farmers' concerns.³³

Policy LR P5

80. Federated Farmers' position on Policy LR P5 is set out above. As set out in Federated Farmers' submission, it considers that Policy LR P5 could be amended to provide for allocating managed reduction targets, for the purpose of supporting the achievement of the TLI objective.

Policy LR P6

81. Policy LR P6 has been tinkered with as part of clarification of the NDAs and 435t nitrogen target.³⁴ In contrast, Federated Farmers seeks the deletion of Policy LR P6 to reflect its position on the underlying concepts (most notably, its opposition to allocation of nitrogen to an individual property level).

Policy LR P7

82. The Hearing Panel decided to reject Federated Farmers' submission that Policy LR P7 is widened to include a range of flexibility, transfer and trading mechanisms.³⁵ As explained in its submission, Federated Farmers considers that the incentives fund, together with flexibility, transfer and trading mechanisms have a key role to play in supporting land use change and enabling development while maintaining or reducing

³³ Decision at paragraph 560.

³⁴ Decision at paragraph 568.

³⁵ Decision at paragraph 573.

nutrient losses. As explained above, it is a fundamental part of the expanded portfolio of options that Federated Farmers' alternative framework seeks to provide.

83. Federated Farmers considers that Policy LR P7 ought to be amended to provide for a wider range of options and alternatives to achieve improvements in Lake water quality.

Policy LR P8

84. Policy LR P8 is another example of how Federated Farmers' opposition to the underlying concepts means that fundamental changes are required as opposed to merely tinkering with the policy. As set out in detail in its submission, Federated Farmers seeks changes to this policy to re-focus it on achievement of the TLI and encouraging whole of catchment actions, as opposed to a narrow focus on the 435t nitrogen target, allocating this to a property level and regulating it through NMPs.
85. The Hearing Panel's decision is to adopt Council's recommendations on Policy LR P8 (save for the addition of the words "including good management practices") and to insert additional phosphorous management obligations into Schedule LR Six 5(b).³⁶
86. This illustrates a fundamental difference in the approach adopted in PC10 (being to require implementation of non-tailored NMPs to achieve NDAs and manage/mitigate phosphorous independently from nitrogen and sub-catchment efforts) as opposed to Federated Farmers' alternative framework (being whole of catchment community engagement through sub-catchment action plans to manage reasonable nutrient reductions and provide for a tailored approach with better water quality outcomes).
87. Federated Farmers opposes Policy LR P8 and the amendment to Schedule LR Six 5(b), which implies that there is no limit to the phosphorous mitigations required by individual land owners, no consideration of sub-catchment factors and no integration of approaches or nutrients.

³⁶ Decision at paragraphs 577 and 578.

Policy LR P10

88. Policy LR P10 is another example of how Federated Farmers' opposition to the underlying concepts mean that fundamental changes are required as opposed to merely tinkering with the policy. The decisions version changes this policy to focus on managing farming activities to their NDAs.³⁷
89. Federated Farmers seeks changes to this policy to instead focus on the range of activities that are permitted, as provided in its alternative rule framework (and as contemplated by its submission).

New Policy LR P11

90. The decisions report adopts a new Policy LR P11 to provide an alternative consenting pathway for owners of properties that are 5 to 10ha in size. Federated Farmers does not support this policy for several reasons.
91. First, there is insufficient analysis of the impact of allowing lifestyle properties that exceed the stocking rate table to increase to 80% of the drystock reference file average. Second, such a policy is not necessary under the alternative framework Federated Farmers proposes in its submission. Under Federated Farmers' proposal, properties between 5 and 10ha that do not comply with the stocking rate table would need to obtain a nutrient benchmark and not exceed it.
92. Federated Farmers considers that this approach is consistent with how other landowners are treated and removes the arbitrary nature of simply allocating them 80% of the drystock reference file average. It is also likely to provide these property owners with the flexibility they seek.
93. Federated Farmers acknowledges that lifestyle property owners may not have sufficient records to establish a nutrient benchmark based on the requirements in Rule 11. It proposes that alternative options for calculating the benchmark (such as taking the benchmarking years as the 12 to 24 month period prior to notification of PC10) could be provided in circumstances where it is not practical to calculate a Rule 11 benchmark.

³⁷ Decision at paragraph 583.

New Policy LR P12

94. The decisions report adopts a new Policy LR P12 to provide a “measure of relief” for under developed Maori land.³⁸ As with the other policies, Federated Farmers considers that the concerns that the Hearing Panel is attempting to address relate to fundamental concerns with the underlying concepts that cannot be rectified by tinkering with the policy. Federated Farmers opposes the decision on this policy for several reasons.
95. Federated Farmers does not consider that it is appropriate to manage resources on the basis of ownership.³⁹ It supports an effects based approach that is supported by robust science and other evidence, and a sound community process. Federated Farmers considers that its alternative framework provides a more appropriate means of addressing the concerns of owners of under developed Maori land.
96. As proposed in Federated Farmers’ submission, under its alternative framework properties maintain existing nitrogen leaching levels while the science review is undertaken. The downward trajectory in nitrogen leaching is maintained through the adoption of good management practices and coordinated and integrated whole of sub-catchment actions.
97. In the meantime, Federated Farmers’ proposal is to provide appropriate flexibility for intensification (including potential development of Maori land) through provisions such as:
- a. Rules that allow farm enterprises to be managed as whole entities and to being benchmarked as whole farm averages.
 - b. Rules that are effects based and allow offsets and mitigations outside of Overseer to be taken into account.
 - c. Policies and methods that provide a positive and enabling platform for whole of community engagement, innovation and solutions.

³⁸ Decision at paragraph 586.

³⁹ The Courts have established that sustainable management takes priority over property rights, ownership of resources is not of itself relevant under the RMA, all land is subject to the RMA, and Maori owned land is not exempt from the RMA *Falkner v Gisborne District Council* [1995] NZLR 622; *Haddon v Auckland Regional Council* A077/93; *Western Bay of Plenty District Council v Te Whaiti* A128/05.

98. Importantly, Federated Farmers' proposal creates a framework that enables the NPS-FM to be given effect to. The clear message during the hearing (across all submitters) was the lack of consultation and collaboration with the community. Federated Farmers' proposal is that the science review needs to happen first and then a robust community engagement process by implementing the NPS-FM for the Rotorua Lakes WMA.
99. Contrary to the hearing panel's decision that the new policy is required to address inequities,⁴⁰ Federated Farmers considers that any inequities ought to be addressed through a robust and transparent process (i.e. upon completion of the science review and in the context of implementing the NPS-FM) and not through ad hoc changes to a plan change that is based on flawed assumptions and underlying concepts.
100. Federated Farmers is concerned about the potential implications for the ability of PC10 to achieve the 435t limit (which it seeks to achieve) if an additional 11.9t/N/yr is allocated to up to 800ha of underdeveloped Maori land. Federated Farmers is concerned that this potentially undermines the entire framework upon which PC10 is based and potentially has implications for the allocations to other farming activities.
101. Federated Farmers also considers that the potential additional allocation is unlikely to address the concerns that were raised because the policy (and Rule LR 11A) only applies to a narrow class of land (e.g. it does not apply to settlement land). There are also likely to be significant impediments to development of that land which mean that it cannot be developed prior to the 2022 deadline. In addition, it is arguable that no land intensification or development could meet the requirement that any adverse effects on water quality (from the increase in nitrogen) are offset.

Policy LR P13

102. Federated Farmers' submission seeks the deletion of Policy LR P13 to reflect its position on the concepts that underpin PC10. The decisions report adopts the Council planner's recommendation in Version 7 of the section 42A report (merging policies LR P11 and P12 into P13, with

⁴⁰ Decision at paragraph 590.

substantive changes), with a minor amendment to add the words “not permitted.”

103. Federated Farmers disputes that there was scope to amend Policies LR P11 and P12 in the notified version of PC10 by replacing them with Policy LR P13. The submission by the Fertiliser Association and further submission by CNI Iwi Land Management Limited that the section 42A report relies on seek changes to be more directive about the outcomes required but in a way that provides for farming activities. In contrast, the decisions version of Policy LR P13 does not provide for farming activities and arguably does the opposite (a possible interpretation is that anything other than permitted farming activities is to be avoided i.e. prohibited).
104. Federated Farmers strongly opposes the use of the word “avoid” for reasons including that a possible interpretation of that word could mean that farming activities would be prohibited. Federated Farmers also opposes the wording of Policy LR P13 on the basis that a possible interpretation is that all farms which do not have resource consent and/or an NDA and/or NMP would be prohibited. There could be a range of reasons why a farm has not obtained these things (including delays in Council processing consents) and it is not an acceptable outcome that they could be considered to be prohibited activities in the meantime (or not otherwise provided for).
105. Federated Farmers’ alternative framework resolves these issues by deleting this policy to ensure that consistency and relativity is maintained.

Use of Overseer – Policies LR P14 and P15

106. Federated Farmers’ submission seeks substantive changes to Policies LR P14 and P15 to address its concerns with the concepts that underpin these policies, including the reference file system and use of Overseer.
107. Federated Farmers’ concerns include that the “averages of averages” approach to Overseer version changes could have potentially disastrous consequences for land use activities (particularly if their Overseer number increases significantly and disproportionately to their NDA). It “dumbs down” the use of Overseer at a farm and catchment scale. These concerns have not been addressed.

108. Federated Farmers seeks changes to these policies as set out in its submission.

Information requirements

109. The decisions report agrees with the section 42A report's recommendation that Policy LR P15 as notified can be deleted because the information requirements are addressed in other provisions.

110. Federated Farmers' alternative framework (as provided for in its submission) proposes that the information requirements are extended to properties over 40ha. This is consistent with its view that underpinning the rule regime ought to be a requirement that the Rule 11 benchmark regime (or something similar to ensure that gains already made in nitrogen reductions are not lost) continues (which would require information requirements for permitted activities).

Assessment of consent applications – Policies LR P16 and LRP17

111. Policies LR P16 and P17 again hinge on the concepts that underpin PC10 (most notably the NDA and allocation regime). In its submission Federated Farmers sought substantive changes to Policy LR P16 and the deletion of Policy LR P17 to reflect its view that there ought to be no non-complying activity status (farming should be an activity that PC10 contemplates) and to provide for a wider range of offsets and mitigations.

112. Federated Farmers is very concerned that there is no pathway for existing farming activities that cannot meet their NDAs or where meeting them would not be financially viable. Federated Farmers does not consider that it is acceptable to put in place a strict rule regime now (that does not withstand community, science or economic scrutiny) in the hope that future technology may assist farmers to reach targets.

113. The decisions version of Policies LR P16 and P17 reinforces Federated Farmers' concerns and are opposed.

114. An additional concern with the decisions version of Policy LR P17 is that it effectively raises the bar for non-complying activities. The gateway test under section 104D is that non-complying activities must first meet **either** the requirement that effects are no more than minor **or** the requirement

that they are consistent with the policies and objectives of the Plan. After passing the gateway test, the activity effectively becomes a discretionary activity.

115. Federated Farmers is concerned that the effect of the wording of Policy LR P17 is that non-complying activities must be **both** no more than minor **and** consistent with the objectives and policies of the plan. Federated Farmers is concerned that not only is there no vires to make such a change (which effectively amends section 104D) but also, on the basis of the decisions version, there are unlikely to be any farming activities that meet this threshold.

Implementation matters – Policies LR P18 and P19

116. The decisions report adopts the section 42A report's recommendations that new policies are adopted to provide some acknowledgement of the implications for urban land use.⁴¹
117. Federated Farmers agrees that water quality and achievement of the TLI cannot be considered in isolation from the effects of urban land use activities. The intention of the sub-catchment approach that underlies Federated Farmers' alternative proposal is that all land uses and contaminant sources within each sub-catchment are considered, hot spots are identified and whole of catchment solutions or mitigations are considered.
118. Federated Farmers opposes Policy LR P18 on the basis that the focus is on the 435t nitrogen target. Federated Farmers considers that the focus ought to be on Lake water quality and the TLI, consistent with its views on the underlying concepts.
119. Federated Farmers also opposes Policy LR P19. Federated Farmers is concerned about the ambiguity in this policy and lack of clarity as to its implications. For example, one implication is that an increased allowance for the discharge of nitrogen from the WWTP is supported as urban growth increases. As set out above, Federated Farmers does not support the proposed "accounting mechanism" that appears to be the subject of a memorandum of understanding between the Regional and District

⁴¹ Decision at paragraph 603.

Council. Not only is Federated Farmers concerned about the lack of transparency, but also it is concerned about the lack of understanding of the water quality and science implications e.g. the impact of attenuation or groundwater travel time.

120. The current science indicates that average attenuation in the catchment is 46% and it varies between sub-catchments. It is not clear whether the proposed accounting methodology will take into account attenuation i.e. not all of the nitrogen leaching from rural land will be entering the Lake whereas all of the nitrogen leaving the Wastewater Treatment Plan will be discharged directly into the lake (in places like Ngongotaha where attenuation is estimated to be 85% the impact could be significant). There is also no time lag in point source discharges to the Lake, compared with diffuse discharges to land.
121. Federated Farmers is also concerned that there is no scope for the addition of Policies LR P18 and P19, particularly if the determination that PC10 only applies to rural land use activities stands.
122. Federated Farmers acknowledges the growth pressures on the District Council and the WWTP and the unenviable position it is in with the Integrated Framework effectively capping nitrogen discharges from the WWTP. However, it considers that its alternative framework is a more appropriate way forward than retrospectively tinkering with PC10 to add these policies and amend Method LR M5.
123. For example, the science review, the development of integrated whole of sub-catchment action plans that look at all sources of contaminants (e.g. pastoral, forestry, urban and source/sink/transport pathways), the collection of sub-catchment level data and a community process through the implementation of the NPS-FM provide a more robust framework for addressing these issues.

Methods

124. The decisions report rejects alternative methods put forward by Federated Farmers and other submitters.⁴² It adopts the methods proposed in version 7 of the section 42A report.
125. Federated Farmers seeks the adoption of a new method framework as proposed in its submission. It considers that fundamental changes are required to reflect its position on the concepts that underpin (or ought to underpin) PC10. Notwithstanding this view, specific concerns with the methods are set out below.

Methods LR M1 and M5

126. Federated Farmers does not support the changes that have been made to Methods LR M1(c) and M5(g) to provide for additional nitrogen allocation for urban land use. Not only is this approach inconsistent with Federated Farmers' position on the underlying concepts (including no allocation to a individual property level), but also there is a lack of transparency or understanding of how any system would operate, the impacts on the environment and the impacts on other land use activities. As explained above, Federated Farmers has significant concerns about how such a proposal would take into account factors such as attenuation.

Method LR M2

127. Federated Farmers' concerns with Method LR M2 relate to its view on the underlying concepts. The changes it seeks in its submission to Method LR M2 relate to ensuring a robust science review is undertaken with reference to the water quality TLI objective and without restricting the science review to confirming the 435t nitrogen load.
128. The evidence at the hearing was that the TLI has been achieved without reducing nitrogen to 435t. The science joint witness statement helpfully identified the agreement between the scientists as to the scope and purpose of the science review. This ought to be reflected in Method LR M2.

⁴² Decision at paragraph 604.

129. Federated Farmers opposes the changes to paragraphs (b) and (c) on the basis that this paragraph is inconsistent with its view of the underlying concepts. This includes Federated Farmers' view that progress ought to be made through a sub-catchment approach and that it is the TLI water quality objective that is relevant as opposed to a fixed nitrogen limit. It also includes consideration of all sources of nutrients (not simply external sources, which the effect of the amendment to paragraph (c)).
130. Federated Farmers considers that paragraph (d) ought to be amended to provide incentives and support for the preparation of NMPs.
131. Federated Farmers does not support the changes to paragraph (e). Its view is that it is industry **agreed** good management practices that ought to be encouraged and supported and that this ought to apply urban land uses and well as rural land uses.

Method LR M5

132. Federated Farmers' submission seeks changes to Method LR M5 and the adoption of RWLP method 41 on a sub-catchment scale (or something similar) to support and resource sub-catchment planning e.g. the establishment of sub-catchment action plans and sub-catchment committees. While amendments have been made paragraphs (f), (h) and (i) of Method 5, these do not go far enough as to create, facilitate or enable the sub-catchment approach that underpins Federated Farmers' alternative approach.
133. In addition, paragraphs (h) and (i) solely focus on phosphorous. As explained in detail in Federated Farmers' submission, a holistic and integrated approach ought to be adopted to the management of the nutrients as they relate to water quality and the source, sink and transport pathways. Federated Farmers does not support a sole and isolated focus on phosphorous because enduring water quality improvements will only be achieved through an integrated and holistic approach. Federated Farmers also does not support a focus on phosphorous that goes beyond what is reasonable, practical and affordable.

New methods

134. Federated Farmers seeks a new method to require Council to develop a process to recognise management practices and innovations which are not currently in Overseer. This is again based on Federated Farmers' view of the underlying concepts, including the need to adopt a holistic approach to water quality the provides for range of mitigations and tools to improve water quality.
135. Federated Farmers also seeks a new method regarding sub-catchment action plans as set out in its submission.

Rules

136. Federated Farmers opposes the decision to reject the alternative rule framework put forward by a group of submitters including Federated Farmers, and to broadly adopt the rule framework put forward by Council.⁴³
137. Contrary to the decisions report, Federated Farmers considers that the rule framework in PC10 will not provide assurances or enable the 140t/N/yr reduction to be made, particularly when changes to the planning framework such as allocations for under developed Maori land and acknowledgement of an accounting methodology for the rural land use change to urban are taken into account.
138. More fundamentally, Federated Farmers' position is that the PC10 rule framework will not achieve the water quality outcomes sought by the community (for reasons including the lack of a holistic and integrated approach, the need for an independent science review before 2032 targets are locked in and pre-determination of the NPS-FM implementation by fixing nitrogen in isolation from consideration of other contaminants and the community values, objectives, limits process).
139. Federated Farmers seeks the adoption of an alternative rule framework as contemplated by its submission to address its concerns with the underlying concepts. Without limiting this position, Federated Farmers' position on specific provisions is set out below to the extent that additional

⁴³ Decision at paragraphs 608 and 609.

or specific matters arise in respect of the rule framework approved by the Hearing Panel.

Rules LR R3 and LR R4

140. Rules LR R3 and R4 appear to have been amended to address concerns raised by submitters that they ought to apply to “effective area” not “total area.”⁴⁴ The effect is to extend the application of Rule LR R3 to apply to larger properties where they are able to exclude areas like houses, garages and non-farmed areas from the “effective area.”
141. Federated Farmers is concerned about issues including how Rules LR R3 and LR R4 would be administered and a lack of certainty for landowners as to whether this rule applies (particularly where they are on the cusp of 5ha). These issues were not considered at the hearing (or there was insufficient consideration) nor has the impact on the nitrogen available for allocation or water quality been adequately considered (for example, there has been insufficient or inadequate consideration as to the total areas of land this would apply to or the effect of effectively excluding those properties that previously had to comply with the stocking rate table from that requirement).
142. This potentially undermines the entire framework (including the allocation model) upon which PC10 is based. For example, if the total area of land no longer captured by Rule LR R4 was significant (e.g. in terms of nitrogen, intensity of use, location or land area), this could have a significant impact on the ability of PC10 to achieve the 140t/N/yr reduction (and may well be the reason PC10 does not achieve this reduction).
143. Federated Farmers’ view is that a certain, consistent and equitable approach ought to be adopted based on sound science and a transparent and robust community process. It considers that its proposal achieves that balance.

Rule LR R7

144. The Hearing Panel’s decision on Rule LR R7 provides an illustration of the ineffectiveness of the Overseer and reference file system. The

⁴⁴ Decision at paragraph 617.

threshold for this rule has been changed from 71% of the nitrogen loss rate in the drystock reference file to 57% due to the effect of Overseer version changes and changes to the reference file methodology.⁴⁵

145. Not only is Federated Farmers concerned that this rule is unlikely to be effective or used (including because it is unlikely that farmers can reach this threshold) but also because this approach does not respond to changes in Overseer or the reference file methodology (and illustrates Federated Farmers' underlying concerns with the Overseer and reference file approach).

Rule LR R8A

146. The decisions report adopts a new Rule LR 8A to provide a simplified consenting pathway for properties between 5 and 10ha in effective area.⁴⁶ Federated Farmers opposes this rule on the basis that the implications are unclear and it fails to deliver the desired certainty.
147. For example, there has been insufficient or inadequate analysis of the implications of providing an allocation of 80% of the drystock reference file to these properties (including how close these properties are now to this number). It is not clear how many land owners would be able to comply with this rule and how effective it would be at achieving its intended purpose.
148. Under the alternative rule framework proposed in Federated Farmers' submission, these landowners would obtain a Rule 11 benchmark (with appropriate flexibility to calculate the benchmark on an alternative basis if they no longer hold sufficient records) to ensure that they do not increase their nitrogen while the science review is carried out and the NPS-FM is implemented (where the community can make informed decisions around matters including values, objectives, limits and any allocations). Federated Farmers considers that its alternative framework is more transparent and certain than Rule LR R8A and addresses the concerns that have been raised.

⁴⁵ Decision at paragraph 626.

⁴⁶ Decision at paragraph 631.

149. The proposed definitions of “lifestyle farming activities” and “simplified nutrient management plan” also present issues regarding uncertainty as to application and raises potential inconsistencies. Federated Farmers considers that regional plans ought to be transparent, clear, supported by robust science and able to be interpreted and applied by all plan users. These definitions would not be necessary under Federated Farmers’ alternative framework.

Rule LR R9 and R11

150. The decisions report specifically rejects Federated Farmers’ and other submitters’ proposals that farming be a permitted activity because that would not achieve the 435t/N/yr target by 2032.⁴⁷

151. Federated Farmers’ position is that PC10 will not achieve this target, for reasons including flaws with the underlying concepts (e.g. the Integrated Framework) and the effects on the target as a result of additional allocations of nitrogen (e.g. allocations for under developed Maori land, an accounting mechanism for development of rural land for urban purposes and changes for lifestyle blocks).

152. Federated Farmers’ proposal is that the Rule 11 benchmark (or something similar) is used as a “back stop” to prevent nitrogen emissions increasing. It is not intended to be used by landowners as a means to erode the gains that have been made since 2001-2004 and to return to historically high levels. In addition, this rule is not to be viewed in isolation from Federated Farmers’ alternative framework which is intended to work as a package to continue the downward trajectory in nitrogen whilst the science review is undertaken and the NPS-FM is implemented.

Rule LR R10

153. The Hearing Panel supported the transfer of nitrogen but was concerned to avoid undermining the incentives scheme and therefore supported restricting transfers to post 1 July 2022.⁴⁸

⁴⁷ Decision at paragraph 635.

⁴⁸ Decision at paragraph 639.

154. In addition to Federated Farmers' views on the underlying concepts (e.g. nitrogen should not be allocated to a property level), Federated Farmers considers that this approach has some fundamental flaws. Federated Farmers considers that a full range of mechanisms to ensure efficiency (including offsets, transfers, whole land area etc) ought to be available. This is provided for in Federated Farmers' alternative proposal.
155. Federated Farmers has fundamental concerns about the incentives framework. It considers that a comprehensive review is required to ensure that the incentives funding is applied to mitigations or measures that will ensure greatest environmental outcomes and best use of public money. This includes expanding the range of options for the incentives board (e.g. purchase land instead of just nitrogen) as informed by the science review (e.g. reducing nitrogen from areas with the lowest level of attenuation to achieve best value for money).

Rule LR R11A

156. The decisions report adopts a new Rule LR R11A to provide for under developed Maori land.⁴⁹ Federated Farmers opposes this rule and refers to the reasons provided in respect of Policy LR P12 above. Federated Farmers considers that its alternative framework addresses the concerns raised by owners of under developed Maori land and does so in a way that is more appropriate than Rule LR R11A.

Rule LR R12

157. The decisions report approves of the use of a non-complying rule for activities that do not meet the permitted or controlled activity standards or for those that do not meet the new restricted discretionary activity rule for under developed Maori land.⁵⁰
158. Federated Farmers considers that farming activities should not default to non-complying. It considers that a pathway ought to be provided for these activities and that a range of mitigations and options ought to be considered (as proposed in its restricted discretionary activity rule).

⁴⁹ Decision at paragraph 646.

⁵⁰ Decision at paragraph 650.

159. Federated Farmers is also concerned that the effect of Policy LR P17 is that the bar has been raised for a non-complying activity such that no activity will ever be able to meet it. The effect would be a planning framework where an activity must either be permitted or controlled (save for a very narrow class of land that could attempt to meet the restricted discretionary activity standards) or it would effectively be prohibited.
160. Notwithstanding its views that farming activities ought to be permitted, Federated Farmers considers that this outcome is too extreme and a middle ground (through use of restricted discretionary or discretionary activities, as contemplated in its alternative framework) ought to be provided.

Definitions

161. The decisions report largely adopts the definitions as proposed in Version 7 of the section 42A report, save for definitions of “simplified nutrient management plan” and “lifestyle farming activities”⁵¹ (in respect of which Federated Farmers’ views are set out above).
162. As set out in its submission, Federated Farmers seeks substantive changes to the definitions to support its alternative framework and consistent with its views on the underlying concepts.

Schedules

163. The decisions report adopts the Schedules without making any modifications, save for consequential amendments to Schedules LR One, Five and Six.⁵² Federated Farmers’ submission seeks substantial changes to the schedules to reflect its position on the underlying concepts. This includes a new schedule regarding the nutrient benchmark, deletion of Schedules LR One and Five and amendments to the others. Federated Farmers opposes the decisions on the Schedules because none of the changes address its concerns and because for the reasons expressed in this notice of appeal.

⁵¹ Decision at paragraph 658.

⁵² Decision at paragraph 661.

Schedule LR One

164. The decisions report amends Schedule LR One to provide that non-benchmarked properties receive the lower range boundary of the dairy and drystock sectors (as opposed to the average). The justification for this appears to be to provide for under developed Maori land⁵³ and to address inequities with those drystock farmers with NDAs at the bottom of the drystock sector. Federated Farmers opposes these changes for several reasons.
165. First, as explained above, Federated Farmers considers that its alternative framework addresses the concerns of owners of underdeveloped Maori land (or provide a process for them to be addressed, including through implementation of the NPS-FM) and considers that the proposed changes will not address their concerns.
166. Second, the effect of the amendment is to provide a different way of calculating a “derived benchmark” for all properties that do not have a benchmark (not just owners of under developed Maori land). There is no (or insufficient) analysis of the implications of this change and no (or insufficient) basis for calculating a derived benchmark in this way.
167. Notwithstanding its position that Schedule LR One ought to be deleted (and its views on the underlying concepts e.g. no allocation) Federated Farmers opposes this amendment to Schedule LR One in the absence of a robust section 32 or section 32AA analysis.

Schedule LR Five

168. The decisions report makes some consequential amendments to Schedule LR Five on the basis of its acceptance of the Council’s proposed changes to the reference file methodology to correct “bugs” it had identified.⁵⁴ Notwithstanding its view that Schedule LR Five ought to be deleted (and opposition to the reference file concept), Federated Farmers does not agree that the methodology changes correct the “bugs” or the issues with Overseer version changes and the reference file methodology.

⁵³ Decision at paragraph 663.

⁵⁴ Decision at paragraph 676.

169. Federated Farmers has concerns that the amendments do not provide sufficient flexibility for future Overseer version changes or “bugs.” There is also a lack of transparency and certainty as to how these issues would be addressed.
170. Notwithstanding its opposition to individual property allocation and the Overseer approach underpinning the reference file methodology, in place of the reference file methodology, Federated Farmers supports the alternative methodology presented by Richard Allen on behalf of Fonterra i.e. that Overseer is re-calculated for every individual farm as a result of version changes (or something similar that would address the concerns raised in Federated Farmers’ submission).

Schedule LR Six

171. The decisions report adds “phosphorous” to the requirement that relevant nitrogen and phosphorous management practices and mitigation measures must be identified. While (in respect of nitrogen) this is arguably less onerous than the notified version (by the deletion of the word “or”) Federated Farmers consider that the obligation in this paragraph is onerous and is likely to have little or no corresponding environmental benefit.
172. Federated Farmers supports the adoption of reasonable, practical and affordable nutrient management practices and mitigation measures. It also supports encouraging industry agreed good management practices. However, it considers that this paragraph in Schedule LR Six goes too far. It is likely to impose significant costs on farmers (as well as wider social and economic costs) when efforts are likely to be best placed addressing the particular nutrient that is an issue through coordinated sub-catchment actions (or approaching nitrogen and phosphorous in an integrated way). Federated Farmers also considers that this obligation goes beyond what was contemplated in the RPS (where the focus is on minimising nutrient losses “as far as is reasonable, practical and affordable”).
173. The decisions report confirms the section 42A report’s recommendation that NMPs are to be the point of monitoring and if necessary compliance. Federated Farmers supports the use of NMPs as contemplated by its submission (including as a decision support tool, tailored to the farm and

sub-catchment action plan and to promote industry agreed good management practices). However, Federated Farmers does not support the use of NMPs as the point of monitoring and compliance as proposed in PC10.

174. Federated Farmers considers that sufficient flexibility to respond to changes in environmental or economic conditions, and sufficient tailoring of NMPs is required to take account of different farm systems and environmental conditions. Federated Farmers does not support a focus on input controls and auditing.
175. Federated Farmers considers that sufficient certainty that land use activities are on track to achieve catchment or sub-catchment targets can be provided without the need to regulate farm inputs or allocate nitrogen to a property level to meet the 2022 catchment intermediate target.

Schedule 2: Summary of Federated Farmers' alternative framework

176. Federated Farmers seeks amendments to the introduction, objectives, policies, methods, rules, definitions and schedules of PC10 to achieve a different balance of regulatory and non-regulatory methods. This is broadly described below, reflected in this notice of appeal and described in more detail in its submission.

177. Federated Farmers' alternative framework is informed partly by:

- a. The statutory context, including:
 - i. RPS policies which provide that farms are responsible for minimising nutrient losses as far as is reasonable, practicable and affordable in accordance with agreed industry good management practice, with the costs of achieving further reductions in nutrient losses over and above that benchmark having a mix of public and private benefits and being funded accordingly.
 - ii. Implementation of the NPS-FM.
- b. Developments in the scientific context.

178. The key elements of Federated Farmers' alternative framework are:

- a. It is an **integrated** framework that includes:
 - i. Nitrogen and phosphorous.
 - ii. Rural and urban.
 - iii. Source and transport and sink.
 - iv. Regulatory and non-regulatory methods.
- b. It is **staged** to maintain a trajectory of progress towards RWLP and RPS objectives and targets, while recognising that the science reviews and plan review processes within the next five years may reset the trajectory.
- c. It provides for **tiers of responsibility** building forward from current industry and council programmes.

Staged approach

179. Federated Farmers' proposal is a staged approach, comprising three broad phases. Phase One (from 2005-2015) was marked by foundation work:

- a. Capping nutrient losses from farms (Rule 11).
- b. Setting the nitrogen reduction target and catchment intermediate target in the RPS.
- c. A very strong programme of underpinning science, including the development of more fine-grained understanding of nutrient flows at sub-catchment scale.
- d. Trialling innovations and interventions e.g. alum treatments in selected streams.

180. Phase Two (broadly the period from 2016-2022) builds forward from the foundation steps. This period is properly the focus for PC10:

- a. Extend the "benchmark and cap" rules to properties outside Rule 11.
- b. Farmers implement measures to minimise nutrient losses in accord with industry agreed good management practice, and with the support of industry; alongside urban sources employing best practicable options to manage and minimise effects of discharges.
- c. Enable development alongside provision for the use of offsets.
- d. Develop Sub-Catchment Action Plans to prioritise interventions to reduce legacy nutrients along the source-transport-sink pathway (ideally aligned to an expanded focus for the Incentives Fund).
- e. Achieve the 2022 catchment intermediate nitrogen reduction target.
- f. Undertake Science Review in 2017; and again in 2022.
- g. Review the RPS nitrogen target, informed by the results of the science reviews.

181. Phase Three (broadly the period from 2022-2032 or beyond):

- a. The Rotorua Lakes WMA implements the NPS-FM (currently scheduled for 2020-2022).
- b. That process will properly be informed by the results of the science reviews.
- c. That process should be expected to assess progress, review values and objectives, re-assess the portfolio of methods and rules, and reset the trajectory as required.

Tiers of responsibility

- 182. For the current period through to 2022 or thereabouts, Federated Farmers proposes a framework which provides for three tiers of responsibility: the first is individual enterprises, the second is sub-catchments, and the third relates to management of the Lake.
- 183. The first and third tiers acknowledge and build forward from existing programmes. The second tier is a new element and involves the development of well-resourced and coordinated Sub-Catchment Action Plans. There is the opportunity for these to build forward from the successful Project Rerewhakaaitu (a three-way funding partnership between MPI, Regional Council and catchment landowners, supported by an independent coordinator, to develop and drive a catchment action plan for their lake).
- 184. An important supporting element would be the development of nutrient reduction targets at a range of scales, structured firstly by sub-catchment, secondly by source of flow, and thirdly by sector, to help focus efforts and assist in tracking progress.
- 185. The first tier of responsibility is individual enterprises, with the focus on mitigating the effects of current landuse at source:
 - a. Rural responsibility for reasonable, practicable and affordable industry good management practices; alongside urban responsibility for “best practicable option.”
 - b. Industry in the lead on good management practice development and extension.

- c. Farmers maintain compliance with industry commitments e.g. Sustainable Dairy Accord; and with Regional Council and District Council rules for farm activities e.g. effluent, earthworks.
 - d. Overseer used as a farm decision support tool, and to assist in tracking progress.
 - e. Farm plans used by farmers and their consultants to identify/prioritise farm hotspots.
 - f. Farmers meet the costs of implementing agreed industry good management practice specific to the farm context to minimise nutrient losses.
 - g. Industry track and report progress against sectoral targets.
186. The second tier is the development of Sub-Catchment Action Plans, with a particular focus on intercepting and/or attenuating legacy loads along the transport pathways:
- a. Prioritise sub-catchments in a staged sequence for the development of Sub-Catchment Action Plans.
 - b. Identify/prioritise nutrient hotspots significant at sub-catchment scale, e.g. the RLTS in Puarenga sub-catchment, gorse hotspots in Waiohewa and Waingaehe.
 - c. Identify/prioritise sub-catchments with significant flood flow particulate nutrients e.g. Ngongotaha, Utuhina; prioritise options for mitigations e.g. detainment bunds.
 - d. In sub-catchments dominated by nutrient rich legacy groundwater e.g. Hamurama, Awahou, prioritise options for attenuation e.g. springs/wetlands/riparian planting.
 - e. Use models to help prioritise; then groundtruth with science tools e.g. LIDAR; and with landowners i.e. the lay of the land and the opportunities.

- f. Invest in active coordination, guided by sub-catchment committees including landowners, lifestyleurs and urban representatives; and supported by industry, science and Council land management team.
- g. Public-private partnership funding targetted to deliver best-bang-for-buck enduring solutions, either permanent landuse change, or “green” infrastructure, or to enable farm reconfigurations within or across farm boundaries.
- h. Council track and monitor progress through existing and expanded stream and groundwater monitoring.

187. The third tier is management of the Lake, with a particular focus on mitigating the effects of the legacy internal nutrient load, building forward from the strong programmes already underway under the Rotorua Te Arawa Lakes Strategy. Federated Farmers seeks broader consideration of the Lake ecology and health, including:

- a. Research to improve understanding of values, including competing values e.g. indigenous species vis-à-vis introduced species.
- b. Improved understanding of nutrients/invasive plants/cyanobacteria dynamics.
- c. Development of more integrated and sophisticated modelling tools to test scenarios and alternate nitrogen/phosphorus reduction targets for managing both catchment and internal nutrient loads.

188. Federated Farmers' submission contains tables illustrating its proposed approach. The tables present indicative nutrient loads dis-aggregated by sub-catchment and by source of flow and illuminate strong patterns across sub-catchments. The details will be subject to amendment and updating (e.g. to incorporate the latest understanding of attenuation) but the principles are drawn from recent science.