IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY
TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU REGISTRY

ENV-2017-AKL-

UNDER	the Resource Management Act 1991
AND	
IN THE MATTER OF	an appeal under clause 14(1) of Schedule 1 of the Act
BETWEEN	**CNI IWI LAND MANAGEMENT LIMITED** **Appellant**
AND	**BAY OF PLENTY REGIONAL COUNCIL** **Respondent**

NOTICE OF APPEAL

26 September 2017

KAHUI LEGAL
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TMW-102092-1-131-V1

To: The Registrar
Environment Court
Auckland

1. CNI Iwi Land Management Limited (**CNI**) appeals against a decision by the Bay of Plenty Regional Council (the **Respondent**) on Proposed Plan Change 10 - Lake Rotorua Nutrient Management to the Bay of Plenty Regional Water and Land Plan (**Plan Change 10**).

2. CNI Iwi Holdings Limited is the trustee company of CNI Iwi Holdings Trust, which is the post-settlement governance entity established to receive from the Crown over 170,000 hectares of Crown forest licensed land (the **CNI Treaty Settlement Land**) pursuant to the Central North Island Iwi Collective Claims Settlement Act 2008. CNI Iwi Holdings Limited has delegated responsibility of the day-to-day management of the CNI Treaty Settlement Land to its wholly-owned subsidiary, CNI. CNI therefore appeals in that capacity.

3. CNI made a submission and further submission on Plan Change 10.

4. CNI is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the **Act**).

5. CNI received notice of the decision on 15 August 2017.

6. The decision was made by the Respondent.

Provisions being appealed

7. CNI is committed to achieving the issues, objectives, policies and methods set out in the Bay of Plenty Regional Policy Statement (the **RPS**). CNI supports the limit within Policy WL 3B of the RPS that the total amount of nitrogen that enters Lake Rotorua shall not exceed 435 tonnes per annum.

8. However, CNI does not support the approach used within Plan Change 10 which allocates nitrogen discharge allowances amongst the various sectors within the Lake Rotorua catchment.

9. The parts of the decision that CNI appeals include, but are not limited to:

(a) the decision to adopt nutrient discharge allocations as a component of a framework (referred to in the decision as an "Integrated Framework") based predominantly on a variant of grandparenting of historical nutrient discharges to land;

(b) the decision to reject nutrient discharge allocations using a natural capital approach, which is based predominantly on the productive capacity of land;

(c) the decision that nutrient discharge allocation based predominantly on a variant of grandparenting is most consistent with the nine principles of Policy WL 5B of the RPS;

(d) the decision to adopt land use rules in relation to Plan Change 10, to the extent those rules are not based on a natural capital model;

(e) the decision to adopt Schedule LR One of Plan Change 10, which sets out the methodology to determine start points, managed reduction targets and nitrogen discharge allocations;

(f) the decision to adopt Schedule LR Seven of Plan Change 10, which sets out how nitrogen discharge allocations or managed reduction offset can be transferred;

(g) the decision to adopt Rule 10 which appears to restrict the transfer of nitrogen discharge allocations to properties/farming enterprises using OVERSEER; and

(h) the decision that the requirements of Schedule 1 of the Act, in relation to the requirement to consult with tangata whenua, have been met.

Reasons for appeal

10. The reasons for this appeal are that the decision on Plan Change 10 does not accord with the relevant requirements of the Act. In particular (but without limitation):

(a) Plan Change 10 does not promote the sustainable management of natural and physical resources.

(b) Plan Change 10 is not consistent with the purposes and principles of the Act, as it does not:

(i) manage the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being;

(ii) sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;

(iii) recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;

(iv) encourage the efficient use and development of natural and physical resources;

(v) have particular regard to kaitiakitanga;

(vi) take into account the principles of the Treaty of Waitangi.

(c) With respect to section 32 of the Act, Plan Change 10 is not the most appropriate means of achieving the purpose of the Act or the purpose of Plan Change 10, being to limit nitrogen discharge to Lake Rotorua to 435 tonnes per annum;

(d) Plan Change 10 does not give effect to the National Policy Statement for Freshwater Management 2014;

(e) Plan Change 10 does not give effect to the RPS, particularly Policy WL 5B; and

(f) Plan Change 10 is not consistent with the Bay of Plenty Regional Water and Land Plan, particularly the integrated management provisions.

11. Without derogating from the generality of the above, the particular reasons for the appeal include (but are not limited to):

(a) Plan Change 10 produces inequitable outcomes for some landowners in the Lake Rotorua Catchment including:

(i) Plan Change 10 prevents, or otherwise significantly restricts, the ability of CNI to develop the CNI Treaty Settlement Lands, or the ability of other landowners to develop other Crown forestry lands within the Lake Rotorua Catchment that have been returned to tangata whenua in settlement of historical Treaty of Waitangi claims (**Treaty Settlement Lands**), in a way that promotes sustainable management;

(ii) Plan Change 10 prevents, or otherwise significantly restricts, the alternative use of land currently used for plantation forestry, in a way that promotes sustainable management;

(iii) Plan Change 10 prevents, or otherwise significantly restricts, the ability of landowners whose land is presently used for low nitrogen leaching activities from using their land to its capability;

(iv) Plan Change 10 does not place the same significant restrictions on other landowners;

(v) The restrictions on the development of Treaty Settlement Lands is an economic risk for CNI, other landowners of Treaty Settlement Lands and other landowners of land that is presently used for low nitrogen leaching activities; and

(vi) When allocating nitrogen discharge allowances, the nitrogen allocation method which currently underpins Plan Change 10 favours land with historically high levels of, and penalises land with historically low levels of, nitrogen discharge into Lake Rotorua;

(b) Plan Change 10 produces outcomes that do not encourage the sustainable management of resources because, among other matters, land that is not naturally suited to the use to which it is currently put is allocated nitrogen based on its current (unsuitable) use;

(c) Plan Change 10 fails to recognise the relationship of the CNI iwi with their land as a taonga and their responsibilities as kaitiaki within their rohe (over both their land and waterways);

(d) The Respondent did not adequately consult or engage with CNI, owner of 7% of the land in the Lake Rotorua catchment, throughout the development and notification period of Plan Change 10, which contributed to the inequitable outcomes within Plan Change 10 being determined on terms which include those outlined above;

(e) The Respondent failed to adequately consider alternatives to Plan Change 10, including a natural capital based approach to the allocation of nitrogen discharge allowances; and

(f) The Respondent failed to adequately consider controls on the other significant nutrient source, phosphorous, that also affects lake water quality, including a requirement to specify the test or associated requirements to manage on-farm practices in accordance with best management practice.

Relief

12. CNI seeks the following relief, or relief of like effect:

(a) that Plan Change 10 be rejected in its entirety; or

(b) in the alternative, and without derogating from the primary relief sought in paragraph 12(a) above, that Plan Change 10 be amended:

(i) by deleting all of the provisions that give effect to a nutrient discharge allocation system based on modified grandparenting and sector averaging;

(ii) to incorporate a natural capital based nutrient allocation system that allocates nutrients according to the inherent productive and assimilative capacity of the land, rather than on the current land use. The result of this will be that some land that historically has carried high leaching land use will be allocated less nutrient discharge allowance than they are under Plan Change 10. Conversely, land that has historically carried low leaching land use may be allocated more nutrient discharge allowance than they are under Plan Change 10; and

(iii) to remove the difficulties faced by landowners of Treaty Settlement Lands to converting land use;

(iv) to clarify that properties/farming enterprises that do not use OVERSEER can trade under Rule 10; and

(c) such further or other relief or other consequential amendments to Plan Change 10 that are considered appropriate and necessary to give effect to the matters of concern set out above.

13. CNI agrees to participate in mediation or other alternative dispute resolution of the proceedings.

14. CNI **attaches** the following documents to this notice:

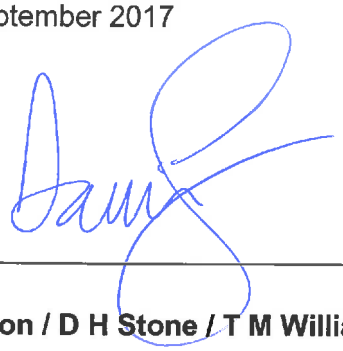
(a) a copy of CNI's submission and further submission (with copies of the submissions opposed and supported by its further submissions) marked **A**;

(b) a copy of the relevant decision marked **B**;

(c) a copy of the National Policy Statement for Freshwater Management 2014 marked **C**; and

(d) a list of name and addresses of persons to be served with a copy of this notice marked **D**.

DATED at Wellington this 26th day of September 2017



J P Ferguson / D H Stone / T M Williams

Counsel for the Appellants

THIS Notice of Appeal is filed by **JAMES PHILIP FERGUSON** and **DAMIAN HOHEPA STONE** and **TE RANGIMĀRIE MAY WILLIAMS**, solicitors for the Appellants, of the firm Kahui Legal, Wellington. The address for service of the Appellants is Level 11, Intilecta Centre, 15 Murphy Street, Wellington.

Documents for service may be left at that address for service or may be:

(a) posted to the solicitors at PO Box 1654, Wellington; or

(b) transmitted to the solicitors by facsimile on 04 495 9990; or

(c) emailed to the solicitors at damian@kahuilegal.co.nz and terangimarie@kahuilegal.co.nz.

Advice for 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 and you lodge a notice of your wish to be party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in sect 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 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 submissions or decisions 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.