

IN THE ENVIRONMENT COURT  
AUCKLAND REGISTRY  
TE KOOTI TAIAO O AOTEAROA  
TĀMAKI MAKĀURAU 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 **MĀORI TRUSTEE**  
**Appellant**

AND **BAY OF PLENTY REGIONAL COUNCIL**  
**Respondent**

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**NOTICE OF APPEAL**

**26 September 2017**

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**KAHUI**  
LEGAL

Solicitors  
PO Box 1654  
Telephone: (04) 495 9999  
Facsimile: (04) 495 9990  
Counsel: J P Ferguson / D H Stone / T M Williams  
**WELLINGTON**

**To: The Registrar  
Environment Court  
Auckland**

1. The Māori Trustee 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. The Māori Trustee made a submission on Plan Change 10.
3. The Māori Trustee is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the **Act**).
4. The Māori Trustee received notice of the decision on 15 August 2017.
5. The decision was made by the Respondent.

**Parts of the decision being appealed**

6. The parts of the decision that the Māori Trustee is appealing are:
  - (a) the whole of the decision on Plan Change 10.
7. The Māori Trustee is committed to achieving the objectives set out in the Bay of Plenty Regional Policy Statement (the **RPS**). The Māori Trustee 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, the Māori Trustee does not support the system within Plan Change 10 that allocates nitrogen discharge allowance amongst the various sectors of the Lake Rotorua catchment nor the restrictions which are placed on landowners seeking to develop their land.
9. The particular parts of the decision the Māori Trustee appeals include, but are not limited to:

- (a) the decision to place restrictions within LR R11A on the ability to develop land held under the Te Ture Whenua Māori Act 1993 (**TTWM Land**) including that:
  - (i) only TTWM Land held in plantation forestry and/or bush/scrub can utilise LR R11A;
  - (ii) TTWM Land held in plantation forestry must be harvested within the next 5 years to utilise LR R11A;
  - (iii) TTWM Land held in bush/scrub must be converted to drystock farming within the next 5 years to utilise LR R11A; and
  - (iv) no more than 800ha of effective area of TTWM Land shall be converted to drystock farming under LR R11A;
- (b) the decision to adopt a nitrogen discharge allowance allocation system that unfairly disadvantages owners of underutilised Māori freehold land.<sup>1</sup>

### **Reasons for appeal**

- 10. The reasons for this appeal include, but are not limited to, the following:
  - (a) Plan Change 10 disadvantages owners of underutilised Māori freehold land;
  - (b) Plan Change 10 does not promote the sustainable management of natural and physical resources;
  - (c) 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,

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<sup>1</sup> Underutilised Māori freehold land was identified by Perrin Ag Consultants Ltd (*Lake Rotorua Underutilised Māori Land Analysis*, 16 May 2016) by progressively eliminating Māori land deemed to be utilised given its existing land use (as identified by the Rule 11 benchmarking process) relative to the geophysical characteristics of the land and any environmental covenants limited land use change.

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) have particular regard to 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
- (d) 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;
- (e) Plan Change 10 does not give effect to the National Policy Statement for Freshwater Management 2014;
- (f) Plan Change 10 does not give effect to the RPS, particularly Policy WL 5B; and
- (g) Plan Change 10 is not consistent with the Bay of Plenty Regional Water and Land Plan (the **RWLP**).
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 does not promote sustainable management and encourages landowners to convert underutilised Māori freehold land to less than its highest and best use;
  - (b) Underutilised Māori freehold land represents 53% of the approximately 15,000 hectares of Māori land that is within the

Lake Rotorua catchment. Plan Change 10 has significant adverse effects on this considerable amount of underutilised Māori freehold land due to the restrictions Plan Change 10 places on converting this land to higher and better use; and

- (c) Plan Change 10 unfairly favours landowners that have had the advantage of developing and utilising their land to its economic potential (and who are responsible for relatively higher levels of nitrogen discharge into Lake Rotorua), whilst penalising underutilised Māori freehold landowners who are historically responsible for relatively lower levels of nitrogen discharge into Lake Rotorua.

### **Relief**

12. The Māori Trustee seeks the following relief:

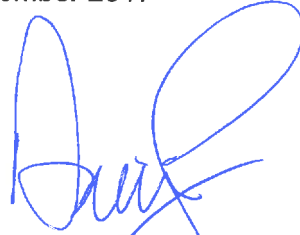
- (a) that Plan Change 10 be rejected in its entirety; or
- (b) without derogating from the relief sought in paragraph 9(a) above, the following alternative relief:
  - (i) Plan Change 10 be amended to exempt underutilised Māori freehold land from Plan Change 10; or
  - (ii) Plan Change 10 be amended to remove the restrictions Māori freehold landowners face in developing their land;
- (c) such further or other relief or other consequential amendments that are considered appropriate and necessary to give effect to the matters of concern set out above.

13. The Māori Trustee **attaches** the following documents to this notice:

- (a) a copy of the Māori Trustee's submission 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 26<sup>th</sup> day of September 2017

A handwritten signature in blue ink, appearing to be 'J P Ferguson', written over a horizontal line.

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**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](mailto:damian@kahuilegal.co.nz) and [terangimarie@kahuilegal.co.nz](mailto: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.