

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KŌTI TAIAO O AOTEAROA**

Decision No. [2020] NZEnvC 213

IN THE MATTER of the Resource Management Act 1991

AND three appeals under clause 14 of Schedule 1 to the Act

BETWEEN FEDERATED FARMERS OF NEW ZEALAND INCORPORATED
(ENV-2017-AKL-146)

AND CNI IWI LAND MANAGEMENT LIMITED
(ENV-2017-AKL-148)

AND MĀORI TRUSTEE
(ENV-2017-AKL-149)

Appellants

AND BAY OF PLENTY REGIONAL COUNCIL
Respondent

AND ROTORUA DISTRICT COUNCIL
TE PŪMAUTANGA O TE ARAWA TRUST
TE MARU O NGĀTI RANGIWEWEHI IWI AUTHORITY
TE KOMITI NUI O NGĀTI WHAKAUE
HANCOCK FOREST MANAGEMENT (NZ) LIMITED
PF OLSEN LIMITED
KAINGAROA TIMBERLANDS PARTNERSHIP
LACHLAN MCKENZIE
LAKE ROTORUA PRIMARY PRODUCERS' COLLECTIVE

Section 274 Parties



Court: Judge D A Kirkpatrick
Commissioner J A Hodges
Special Advisor R M Dunlop

Hearing: at Rotorua from 7 to 10 September 2020

Appearances: P Radich QC and T Hullena for CNI Iwi Land Management Limited, the Māori Trustee, the Rotorua Lakes Council, Te Pūmāutanga o Te Arawa Trust, Te Maru o Ngāti Rangiwewehi Iwi Authority, Te Kōmiti Nui o Ngāti Whakaue, Hancock Forest Management (NZ) Limited, P.F. Olsen Limited and Kaingaroa Timberlands Partnership (together, the Natural Capital Group (NCG)

B Matheson and NJ Edwards for Federated Farmers of New Zealand

S Wooler and R Zame for the Bay of Plenty Regional Council

Date of Decision: 21 December 2020

Date of Issue:

FINAL DECISION

- A:** A nitrogen reallocation of 5tN/y from existing dairy and drystock land to Settlement land shall apply from 31 July 2032 in accordance with updated Schedule LR One, Section D.
- B:** The Regional Council is directed to update Tables LR 6A and LR 6B in Schedule 1 accordingly.
- C:** The Regional Council is directed to make the other amendments to Plan Change 10 as set out in this decision and to file and serve a final version of Plan Change 10 for approval by the Court no later than 5 p.m. on Friday 29 January 2021.
- D:** There is no order as to costs.



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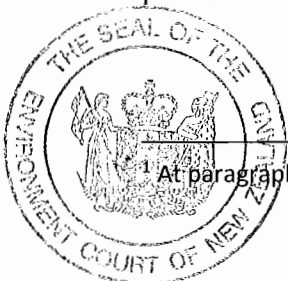
Introduction

[1] Plan Change 10: Lake Rotorua Nutrient Management (**PC10**) to the Bay of Plenty Regional Natural Resources (**RNRP**) introduces policies, rules and other methods to limit the amount of nitrogen from land use entering Lake Rotorua (**the lake**). Its primary purpose is to reduce nitrogen losses from pastoral farming activities on rural land within the Lake Rotorua groundwater catchment in the Bay of Plenty Region. It is intended to contribute towards meeting the Sustainable Lake Load of 435 tonnes of nitrogen per year (**tN/y**) by 2032, in order to give effect to Policy WL 3B of the Bay of Plenty Regional Policy Statement (**RPS**).

[2] The Decisions Version of PC10 was the subject of a number of appeals to the Environment Court. The main issue in dispute between the parties was the most appropriate of two alternative methods for allocating nitrogen to different land uses. By agreement with the parties, a Stage 1 hearing was held to resolve this aspect of the dispute. This was to be followed by a Stage 2 hearing to consider the most appropriate planning provisions to be included in the RNRP in light of the decision on the appropriate allocation method.

[3] The Interim Decision following the Stage 1 hearing was issued on 9 August 2019. We found that the most appropriate method to allocate nitrogen to rural land uses in the Rotorua Lake catchment is the sector range method proposed in PC10, with modifications.¹ This Stage 2 decision addresses specific matters set out in the Interim Decision and finalises the provisions of PC10.

At paragraph 372.



[4] Following the Interim Decision, subsequent mediation and discussions between the parties resulted in all but one of the outstanding matters being agreed on and made subject to a consent order dated 29 May 2020. The one exception was the issue identified in paragraph [374] (g) of the Interim Decision where we directed the Regional Council to provide evidence at the Stage 2 hearing on:

What changes to the rules are considered appropriate, following consultation with NCG, to address the matters raised in relation to an additional allocation to Treaty Settlement land similar to "Provide for the development of multiple-owned Māori land in a manner which enables Māori to develop papakāinga, marae and associated community facilities or housing or enables Māori to develop multiply owned Māori land and resources to provide social and economic benefits" in accordance with RPS Policy IW 1 B (b) and (c) (see paragraph [228]).

[5] Evidence at the Stage 2 hearing was limited to:

- (a) the issue quoted at [4] above and related provisions to be included in PC10 in relation to Treaty Settlement land (**Settlement land**); and
- (b) the extent to which PC10 must give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM**) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESF**), both of which came into effect on 3 September 2020.

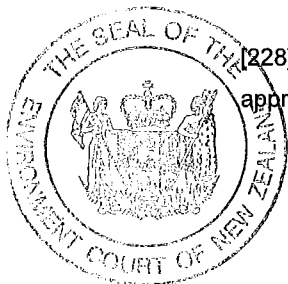
Our approach

[6] We start by reproducing the following paragraphs from the Interim Decision that are particularly relevant to our Stage 2 Decision.

[226] We accept that use of the land for papakāinga, tourism ventures and visitor accommodation and the like could be economically viable and attractive to some land owners but would anticipate such uses would occupy relatively modest areas of land. ... Such uses would be generally low nitrogen-discharging activities in the context of the catchment as a whole.

[227] Based on the evidence, we find it is unlikely that any significant conversion from forestry or bush and scrub to pastoral use would be likely to occur on economic grounds alone. We find that other types of land use including papakāinga, tourism ventures, visitor accommodation and possibly short rotation carbon crops and various forms of horticulture including orcharding are or could be practicable in certain situations.

[228] We consider that PC10 should recognise these potential uses of Treaty Settlement land in an appropriate way, which we understand to be consistent with Mr Lamb's evidence as set out below. The



Council is **directed** to consider, in consultation with NCG, what might be an appropriate nitrogen allocation for such uses and make provision by way of a proposed rule in evidence at the Stage 2 hearing.

[229] We recognise that any such allocation is likely to require further reductions in allocations for the dairy and dry stock sectors within the current PC 10 framework. However, while we do not consider the allocation will need to be large based on the evidence, we consider it is necessary to have appropriate regard to the equity and cultural values provisions of RPS Policy WL 5B.

[327] In forming our view, we considered each of the nine "principles and considerations" listed in the policy on an equal basis, as the policy does not rank or otherwise differentiate between them in terms of the weight they are to be given.

[362] The Lake Rotorua catchment is seriously over-allocated in terms of its capacity to cope with discharges of nutrients from human activities. This is not a situation where there is an existing surplus of nitrogen to allocate, so the first priority must be to reduce existing nitrogen (and phosphorus) discharges substantially if the desired water quality outcomes for the lake are to be achieved in the most practicable timeframe. The options to do this are limited. A requirement that existing farmers substantially reduce their discharges to meet a defined and agreed water quality target is a significant matter. To require them in addition to make substantial further reductions which are then allocated to others for their own use would go a significant step further. There would need to be compelling reasons in the public interest to use rules in a regional plan to compel such transfers.

[7] For clarity, we record that when having appropriate regard to the equity and cultural values provisions of RPS Policy WL 5B, this cannot be in isolation from all nine "principles and considerations" in the Policy and the wider statutory provisions.

[8] As we did in the Interim Decision, we emphasise that our decision addresses the unique circumstances that exist in the Lake Rotorua groundwater catchment. The same circumstances likely do not exist anywhere else, so considerable caution should be used before seeking to transfer the findings of this decision to other locations without a thorough evaluation of their applicability and appropriateness.

[9] We note at the outset that all parties agreed that an additional allocation of nitrogen to Settlement land can be made within the PC10 planning framework. They disagreed on the appropriate quantum. The NCG sought 8.67 tN/y while Federated Farmers said 3.5 tN/y would be appropriate. The Regional Council offered several options and submitted that 8.2 tN/y would be appropriate.

[10] There is no clear and unequivocal way in which an appropriate allocation can be determined within the complex circumstances in which PC10 is to operate and with its



provisions substantially finalised. Accordingly, our approach involves first defining the purpose of the allocation and the key matters we considered in making our decision. To provide clarity, we start by considering the extent to which any nitrogen allocation to Settlement land needs to be determined on a consistent basis to that used by the IHP in setting the allocation to TTWM land held under Te Ture Whenua Māori 1993 / the Māori Land Act 1993 (**TTWM land**) as submitted by the respondent Council.²

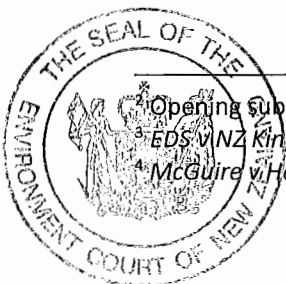
Extent to which provisions relating to TTWM land are relevant to a nitrogen allocation to Settlement land

[11] The operative RPS includes objectives and policies relating generally to Māori land and specifically to TTWM land. Objective 16 and associated policies apply only to TTWM land, requiring that multiple-owned Māori land is developed and used in a manner that enables Māori to provide for their social, economic and cultural wellbeing and their health and safety, while maintaining and safeguarding its mauri. There is no corresponding objective or policy related to Settlement land and the operative provisions apply.

[12] This indicates to us that the operative RPS does not address TTWM land and Settlement land in the same way. This means that allocating nitrogen on a directly or broadly comparable basis may not be consistent with the RPS. Objectives 13 and 15 and Policies IW 2B, 4B and 5B are relevant to the allocation of nitrogen to Māori land generally, including Settlement land. Nevertheless, there remains a lack of clarity as to how an appropriate nitrogen allocation to Settlement land is to be made in accordance with the RPS. For that reason, we may refer to Part 2 of the RMA for guidance.³

[13] The quantity of nitrogen allocated to TTWM land was determined by the Independent Hearings Panel (**IHP**). The IHP Decisions Report records:

[588] We are conscious of the need, as expressed by the Privy Council,⁴ that the directions relating to Māori are strong directions to be borne in mind at each stage of the planning process. Conscious of this direction, and having regard to the evidence we received relating to the under-developed and under-utilised Māori land in the catchment, we have reached the view that some accommodation should be made if this is at all possible.



² Opening Submissions for Regional Council at [15] and [16].

³ *EDS v NZ King Salmon* [2014] NZSC 38, [2014] 1 NZLR 593.

⁴ *McGuire v Hastings District Council* [2001] NZPC 10; [2002] 2 NZLR 577; [2001] NZRMA 557 at [577].

[14] For similar reasons, we directed in the Interim Decision that an appropriate allocation of nitrogen is to be made available to Settlement land. We acknowledge that the Regional Council provided the IHP with a range of evidence relating to the question of allocation and provided us with evidence on a similar basis. However, our reading of the IHP Decision Report indicates to us that the IHP allocated the maximum available quantity of nitrogen to under-utilised TTWM land that could be allocated without resulting in the sustainable catchment load of 435tN/y being exceeded. The report gives no guidance as to how it arrived at that allocation⁵.

[15] In our direction to the Regional Council in paragraph [374] (g) of the Interim Decision, we referred to RPS Policy IW 1B (b) and (c). This describes the types of development that are to be provided for, which are broadly speaking the types of development envisaged for Settlement land, subject to other comments in the Interim Decision. The Policy makes no reference to the quantity to be provided to TTWM land. Even if it did, it could not be used as a basis for determining the quantity that can be allocated to Settlement land as the two types of land are treated differently in the RPS and the basis on which the quantity was set are not known.

[16] Accordingly, we do not consider the 11.9 tN/y allocated to TTWM land provides an appropriate starting point for determining an allocation to Settlement land. However, it provides a useful reference point that we return to later. Further, we do not see any basis under the RMA or the higher order plan provisions to require a nitrogen allocation to Settlement land to be made on the same basis as that used to make an allocation to TTWM land. On the contrary, the RPS makes no specific provision for Settlement land, indicating to us that any nitrogen allocations made to it needs to recognise this in an appropriate way.

Definition of Settlement land for the purpose of PC10

[17] We note the following definition set out in Annexure A of the closing submissions of the Regional Council, and supported by Federated Farmers:

Settlement land: Rural land within the Lake Rotorua Groundwater Catchment returned as commercial redress in accordance with the Ngāti Rangiwewehi Claims Settlement Act 2014 or identified as CNI Forests Land in the Central North Island Forests Land Collective Settlement Act 2008 on or before 31 December 2019



Opening submissions for Regional Council at paragraph 15.

[18] Mr Hullena stated when cross examining Ms Moleta, that some cultural redress land was returned without restrictions. For this reason, we see no valid reason to restrict the definition to commercial redress land.⁶ This was accepted in closing submissions by the Regional Council.⁷

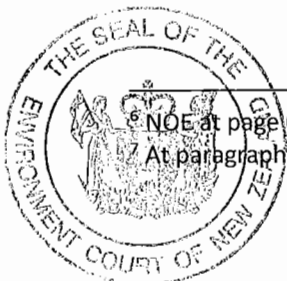
Purpose of the allocation to Settlement land

[19] In defining the purpose of the allocation, the RPS explanation relating to Policy IW 1B provides a helpful starting point, as follows:

Multiple-owned Māori land is more difficult to develop than land in general title. Local authorities are well placed to help hapū, trusts, Māori organisations and iwi to plan for the development of their land. Māori housing and associated activities around rural marae have been in existence for many decades. The continuation and expansion of papakāinga and other marae based activities, subject to structure planning and relevant statutory process, is appropriate for giving effect to Part 2 requirements of the Act and recognising the statutory provisions in Te Ture Whenua Māori Act 1993.

[20] The emphasis is firmly on the continuation and expansion of papakāinga and other marae-based activities. We are also mindful of RPS Policy IW 2B which provides, in part, that “Proposals which may affect the relationship of Māori and their culture and traditions must recognise and provide for traditional Māori uses and practices relating to natural and physical resources [and] the role of tangata whenua as kaitiaki of the mauri of their resources”. These provisions are broadly consistent with our findings relating to uses and practices in paragraphs [227] and [228] of the Interim Decision. Consistent with s8 RMA, the Court is also to take into account relevant principles of the Treaty while recognising that these continue to evolve and be defined (RPS Policy IW 3B) and we have done so.

[21] RPS Policy IW 1B expressly makes reference to associated customary activities and providing for social and economic benefits. However, in the appeal before the Court, these must be considered in the scope of PC10, which applies to the land containing rural production (pastoral activities) and forestry. PC10 controls rural land use activities, with a particular emphasis on reducing nitrogen by good farm management practices. Industrial land uses in rural areas of the Lake Rotorua catchment are not within the scope of PC10, instead being addressed in other provisions of the Regional Natural Resources Plan.



⁶ NOE at page 63 onwards.
⁷ At paragraph 18.

[22] Based on the above, and taking into account the wording of RPS Policy IW 1B, we define the purpose of the allocation as:

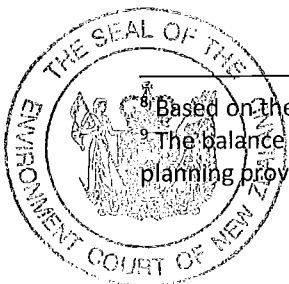
Provide an appropriate annual allowance of nitrogen to Settlement land that enables the conversion of forestry and bush/scrub for:

- (a) Papakāinga, marae and associated community facilities or housing, tourism ventures, visitor accommodation, short rotation carbon crops and various forms of horticulture; and
- (b) Development of the land to provide social and economic benefits.

Key matters considered

[23] In addition to relevant statutory provisions, we considered the following key matters when making our decision:

- (a) The quantity of nitrogen allocated is sufficient to enable land uses that are credible, meaning they must be able to be believed; convincing; and capable of persuading people that something will happen or be successful.⁸
- (b) The quantity of additional nitrogen allocated and any associated PC10 provisions provide an equitable balance between the interests of Settlement land receiving the allocation and existing dairy and dry-stock land, whose nitrogen allocation will be reduced to provide the additional allocation.⁹
- (c) Provisions relating to nitrogen reallocated to Settlement land are broadly similar to those applying to other nitrogen allocations in the catchment in terms of managing effects on the environment, consent status, future policy reviews and other relevant PC10 provisions unless there are clear reasons to do otherwise.



⁸Based on the Oxford Dictionary definition.

⁹The balance must take into account the overall requirements of the RMA and the relevant higher order planning provisions, not any individual RNRP objectives and policies in isolation.

- (d) Treaty breaches and past injustices are not matters that the Court can address in terms of redress as these are matters for the Crown.^{10,11}

Nitrogen allocations proposed by the parties

Natural Capital Group (NCG)

[24] Mr Te Pou, General Manager of CNI Iwi Land Management Limited, explained that the nitrogen allocation proposed by NCG is based on a natural capital approach to land use from the perspective of Iwi, with emphasis on the capability of that land to sustain the proposed use, which he described as the “Credible Futures Approach”. At the core of the approach is the process of matching a credible land use with land that could sustainably accommodate that use at some time within the PC10 planning horizon. It is focussed on land that is considered more versatile and productive, typically land being of Land Use Capability (LUC) classes 1 to 4.¹²

[25] NCG proposed that an appropriate allocation is 8.67 tN/y.

[26] At paragraph 5.1 of the Stage 2 Cultural Impact Assessment (CIA) attached to the evidence of Ms NM Douglas, the Environmental Manager for the Te Arawa Lakes Trust, it says:

... Ideally, for the Iwi Collective, the best possible allocation of nitrogen to Settlement Land is one that allows for unfettered use and development of that land in a way that is consistent with the tikanga, practices and values systems of each of the Iwi Collective iwi and hapū groups. Given that that ideal is not possible, the Credible Futures Approach represents one compromise to allowing for some development of the Settlement Land in a way that emphasises the values of mana whenua.

[27] The CIA describes the core mana whenua values of tino rangatiratanga, mauri, wai, whakapapa, kaitiakitanga, utu, muru and tau-utuutu and describes how the Credible Futures Approach will contribute to meeting them. Other matters raised in the CIA include:

- (a) Treaty settlement land owners should have the freedom to use our allocation as we see fit within the 435tN limit (recognising that iwi decision-making

¹⁰ At paragraph 40 of Federated Farmers opening submissions, citing *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnv Court 93 at [67].

¹¹ The additional quantity of nitrogen must be determined in accordance with the RMA and associated regional planning documents only. It is not the intent of the RMA that any additional allocation is made for the purposes of financial compensation, wealth transfer or to allow land to be developed to its highest potential.

¹² EIG at paragraphs 22 and 24.



processes have a very high-level of internal scrutiny and debate and are required to uphold tikanga including kaitiakitanga).

- (b) Having to apply for consent to use the nitrogen allocation for Treaty settlement land undermines rangatiratanga. Requiring mana whenua to make an application to an external body to make decisions about our taonga undermines our role.
- (c) The allocation should go directly to the landowner, so that we can make those decisions as communities, in accordance with our tikanga and values.

[28] Economic evidence on behalf of NCG was presented by Dr RB Meade, a consulting economist. The “Credible Futures” identified by NCG are summarised in the following Table 3.1 reproduced from Dr Meade's evidence, together with the quantities of nitrogen sought for each land use.

No.	Title	Description (further developed by Meade)	Ha*	tN/y Sought
1	Whakarewarewa - tourism Hub 2 and hotel	Hotel with 280 beds (plus café/spa not evaluated)	1	0.28
2	Industrial processing - wood and food	Apple cider producer and marketer	1	1.11
3	CNI housing	1,000 dwellings (Tarawera Road area)	50	1.74
4	Hamurana - day tourism and hotel	Hotel with 200 beds (plus café not evaluated)	1	0.18
5	Hamurana - water bottling**	Processing plant and employee facilities, with consent in place to take up to 315ML/year until September 2033	1	0.32
6	Tawakeheimoa - papakāinga, marae and associated facilities	Assume 6 ha x 20 dwellings/ha = 120 dwellings.	6	0.21
7	Hamurana – papakāinga, marae and associated facilities***	Assume 19 ha x 20 dwellings/ha = 380 dwellings. Involves partial conversion of existing marginal golf course to social housing.	19	0.3
8	Tawakeheimoa - day tourism	Café and toilets	1	0.02
9	Tawakeheimoa - sawmill	CLT (cross-laminated timber) mill like Red Stag's announced 2018.	3	0.05
10	CNI market gardening	Pea production, per P&FR (2018)	5	0.39
11	CNI horticulture	Apples, hazelnuts and blueberries, per P&FR (2018)	150	3.8
12	Ngāti Rangiwewehi blueberries - Mamaku	Medium-scale blueberry farm	15	0.27
			253	8.67



Federated Farmers New Zealand Limited (Federated Farmers)

[29] Dr PF Le Miere, North Island Regional Policy Manager of Federated Farmers said, in relation to Plan Change 10 provisions for development of Settlement land, that:

The overarching objective is to ensure fairness and consistency: as between Treaty settlement and Māori freehold land, and also as between Treaty settlement and other land used for farming activities.¹³

[30] Dr Le Miere prepared the following list of land use changes that he considered to be credible as the basis for determining an appropriate nitrogen allocation. He noted that the proposed papakāinga have the potential to house 360 people in total. He also noted that it is not Federated Farmers position that the activities listed must be undertaken.

Conversion of 100 ha to short rotation crops	0.35 tN/y
Conversion of 130 ha to horticultural use (such as nuts and/or blackberries)	2.02 tN/y
Background land uses associated with papakāinga type activities	0.08 tN/y
<u>Sub-total for rural land use nitrogen allocation</u>	<u>2.5 tN/y</u>
2x200 room hotels (reticulated)	0.3 tN/y
4x papakāinga (reticulated)	0.14 tN/y
4x papakāinga (aerated wastewater treatment system and nutrient removal)	0.24 tN/y
Water bottling at Hamurana Springs	0.15 tN/y
Allowance for other activities such as the proposed upgrade works at Whakarewarewa Forest	0.17 tN/y
Miscellaneous allowance	0.05 tN/y
<u>Sub-total for urban land use nitrogen allocation</u>	<u>1.0 tN/y</u>
<u>Total nitrogen allocation</u>	<u>3.5 tN/y</u>

Bay of Plenty Regional Council

[31] Mr SG Lamb, the Regional Council's lead planner for PC10 described the process used by the Council to address the matters raised in the Interim Decision relating to an additional allocation to Settlement land. He explained that the Council interpreted the Court's direction as looking at the allocation in a manner similar to the way in which an allocation to TTWM land was arrived at through the IHP process.



¹³ Dr Le Miere EIC at paragraph 153.

[32] Ms GC Moleta, a member of the Council's Water Policy Team, described the inputs and methodology used by the Council to generate a number of options to address the Court's directions. She confirmed that the Council used the 11.9 tN/y quantity of nitrogen the IHP allocated to TTWM land in Rule LR 11A as an appropriate reference point when determining an allocation under direction [374(g)] of the Decision.

[33] Allocation options for Settlement land were developed proportionally, based on the approaches used in relation to under-developed Māori land in the catchment during the IHP process. In the IHP process, a breakdown of land use by LUC class for "Māori land" (both exclusive and inclusive of Settlement land) was first compared to the rest of the catchment. The data for TTWM land was then used to determine how much land would need to be converted to balance pastoral use between land use ownership in the catchment (i.e. TTWM land versus private title), a method Ms Moleta refers to as "pastoral balancing".

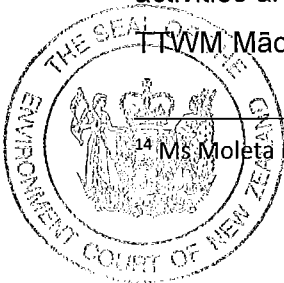
[34] The alternative approach to pastoral balancing described in the Council's case is considering the area of underutilised trees in the catchment, which refers to the area of land in plantation forestry or bush and scrub, on specified land classes, which is not otherwise protected. This approach is referenced in paragraph 594 of the IHP report in relation to TTWM land. For each approach options involving LUC classes 1 to 4 only, and then with LUC class 6 included, were evaluated.

[35] Ms Moleta summarised the resulting potential nitrogen allocations in paragraph 35 of her evidence as follows:

- Option P1: (Pastoral balancing LUC 2 to 4) 7.6 tN/y
- Option P2: (Pastoral balancing LUC 2 to 6) 21.1 tN/y
- Option T1: (Proportional underutilised trees LUC 2 to 4) 8.2 tN/y
- Option T2: (Proportional underutilised trees LUC 2 to 6) 14.4 tN/y

[36] The Council considered an allocation of 8.2 tN/y would be appropriate, based on its proportional underutilised trees approach. The 8.2 tN/y figure was based on the number of unprotected trees on LUC classes 2 – 4¹⁴ to allow flexibility to develop the land, excluding LUC class 6 land utilised for forestry, and recognising that the majority of NCG credible future activities are likely to locate on relatively flat land. Ms Moleta told us that there is 1,480 ha of TTWM Māori unprotected trees on LUC classes 2 – 4 and 1,024 ha of unprotected trees on

¹⁴ Ms Moleta EIC at paragraphs 33 and 38.



Settlement land, which is 69% of the TTWM area. When this percentage is applied to the 11.9tN set aside for TTWM land, the amount allocated to Settlement land could be 8.2tN. Ms Moleta deposed that the proportional trees methodology is simple, would provide sufficient nitrogen to enable development of the activity types proposed by the Settlement entities, and as suggested by the Court. We do not, however, find the factors described to be a compelling basis for determining the reallocation of nitrogen directed in the Court's Stage 1 decision.

Legal considerations

National Policy Statement Freshwater Management 2020

[37] The National Policy Statement Freshwater Management 2020 (**NPSFM**) came into effect on 3 September 2020. The Council's view is that other than in relation to nitrogen, and then only for a minor amount of the over allocation, there is no jurisdiction in this proceeding to amend the provisions of PC10 that are beyond appeal. Mr GM Willis, who gave planning evidence for FFNZ, says that PC10 gives effect to the NPSFM in terms of the nitrogen load on the lake, but considers there are very few other aspects of the NPSFM to which effect could be given now in a reasonably practicable way.¹⁵ We agree with the Council and Mr Willis and our determination does not affect any aspect of the future implementation of the NPSFM other than the nitrogen load on Lake Rotorua. In the Interim Decision, we confirmed that we were satisfied that the Appeals Version of PC10 gives effect to the nitrogen attribute requirements of the NPSFM amended 2017, and these remain unchanged in the NPSFM 2020.

[38] Ms CB Robson, who gave planning evidence for the NCG, says that the provisions of the NPSFM and NESF may be limited as they relate to the Stage 2 hearing, as the scope of the hearing is so narrow.¹⁶ We found nothing in her evidence to indicate she considers there are provisions of the NPSFM that we need to give specific effect to in our Stage 2 decision.

[39] The objective of the NPSFM is:

... to ensure that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.



¹⁵ Mr Willis, Supplementary evidence dated 26 August 2020 at paragraph 3.19.

¹⁶ Ms Robson, Statement of evidence dated 2 September 2020 at paragraph 5.

[40] Of the 15 policies, the following appear to be the most relevant to this proceeding:

- 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.
- 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.
- 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.
- 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.
- 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.
- 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.

[41] Clause 4.1 (1) of the NPSFM requires local authorities to give effect to it "as soon as reasonably practicable". We understand this requirement to be subject to s 55 of the Act and to be integral to ensuring that regional plans give effect to the NPSFM as required by s 67(3)(a) of the Act.

[42] We are satisfied that PC10 is consistent with the objective of the NPSFM and generally consistent with these policies. In particular, the purpose of PC 10 is to restore the health and well-being of the water in Lake Rotorua, which will give effect to Te Mana o te Wai.

[43] The one matter that appears to raise an issue as to whether the contents of PC10 will give effect to the NPSFM is in the application of Policy 11 and the timing of any reallocation of an NDA so as to avoid the over-allocation of it. *Over-allocation* is defined in the NPSFM to mean:

... in relation to both the quantity and quality of freshwater, ... the situation where:

- (a) resource use exceeds a limit; or
- (b) if limits have not been set, [a Freshwater management unit] or part of an FMU is degraded or degrading

[44] As the ability to discharge nitrogen is currently over-allocated in terms of the limit set by Policy WL 3B of the RPS, any reallocation must therefore not occur before other allocations have been reduced by at least an equivalent amount. That would be in 2032, unless there is some earlier surrender of NDAs. We have considered whether this timing issue is within the



scope of a phasing out of an existing over-allocation, as provided for in Policy 11, but we have concluded that as presently structured, any reallocation to Settlement land used prior to 2032 would be a new allocation, which could threaten the 435 tN/y nitrogen cap.

[45] It is also possible that that some of the total nitrogen allocation will not have been granted by way of consents before PC10 becomes operative. This would mean that some reallocation to Settlement land could occur prior to 2032 by reducing the amount allocated in new consents granted to existing land uses after PC10 becomes operative. Within those limits, such reallocation would be consistent with a phasing out of an existing over-allocation, as contemplated by Policy 11, and could ease the rigour of requiring all potential uses of Settlement land to be deferred until 2032.

[46] We consider that all parties affected by this determination are parties to the current appeal, which means no other potentially affected person is disadvantaged by there being no separate Schedule 1 process.

Resource Management (National Environmental Standards for Freshwater) Regulations 2020

[47] The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NESF) came into force on 3 September 2020. The Council submitted that, other than the changes to PC10 proposed by Mr Willis and outlined below, any changes made should be made through the processes set out in the Regulations and the NPSFM in due course.¹⁷ As in the case of the NPSFM, we only have scope to address matters relating to nitrogen because of the confined extent of the remaining appeal.

[48] We have determined that, except in the circumstances outlined in paragraph [45] above, no reallocation of nitrogen can occur until 2032. As the Council will have amended its various plans to align with the NESF before that time, there is no compelling reason to amend PC10 as part of this appeal process. For that reason, we do not address the issue raised by Ms Robson in relation to the way horticulture is defined in PC10 compared to the NESF or the other issues she raised in relation to the NESF.¹⁸

¹⁷ Opening legal submissions on behalf of the Regional Council at paragraph 77.

¹⁸ Ms Robson, Statement of evidence dated 2 September 2020.



[49] Mr Willis identified a number of areas where he considered PC10 is arguably less stringent than the NESF¹⁹ and which he considered can be addressed in part now when finalising PC 10 without a Schedule 1 process in accordance with s 44A of the RMA. Specifically, he suggested:

- (a) adding an advice note that some changes in land use that would be permitted or require controlled or RDA activity consent under PC10 might require a discretionary consent under the NESF;
- (b) an amendment to Rule LR R13, which permits discharges from land uses where the land use is authorised under PC10 land use rules, and the discharge is not a discretionary activity under the NESF; and
- (c) adding an advisory note to Rule LR 11A, which relates to RDA consents, to the effect that until 1 January 2025, a discretionary consent will be required under the NESF for any conversion of forestry to pastoral use if the area exceeds 10 ha;

[50] Mr Lamb considered that these amendments should be made to PC10.²⁰ Ms Robson agreed that the amendment to Rule LR R13 would be helpful.²¹ From our review of the NESF and the evidence, we agree with Mr Willis and direct that PC10 be amended in accordance with his recommendations. Given the advanced stage of PC10 through the plan preparation process, we do not consider it can contribute further to the implementation of the NESF.

Section 30 (4) of the RMA

[51] Section 30(4) provides that:

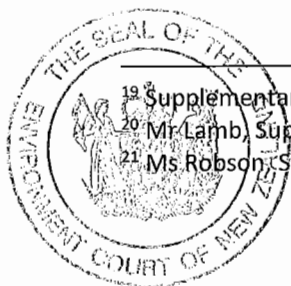
A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:

- (a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and
- ...
- (c) the rule may allocate the resource in anticipation of the expiry of existing consents

¹⁹ Supplementary evidence dated 26 August 2020 at Section 4.

²⁰ Mr Lamb, Supplementary evidence dated 2 September 2020 at paragraph 12.

²¹ Ms Robson, Statement of evidence dated 2 September 2020 at paragraph 24.



[52] Section 30(4) is potentially relevant in that the nitrogen absorption capacity of the Lake already allocated to existing resource consents may not be allocated to other discharges during their term but may be allocated in anticipation of their expiry. From 1 July 2022, farming activities on properties both less than and over 40 ha (excluding lifestyle farming on properties between 5 – 10 ha) that are not permitted under PC10 will require resource consents. These will be controlled activities if they have an approved 2032 Nitrogen Discharge Allocation, relevant Managed Reduction Targets and an approved Nutrient Management Plan.²² Mr Lamb stated²³ that 69% of the total amount of nitrogen to be allocated under PC10 has been allocated in consents already granted. These consents have a 20-year life and are anticipated to expire between 2040 and 2043.

[53] The Council and NCG propose that nitrogen is allocated to Settlement land from 2022. This would mean that for the period 2022 to 2032 there would be additional discharges from land in an already over-allocated catchment. Mr Lamb sees this as a minor issue. However, Policy 11 of the NPSFM means that PC 10 cannot authorise the discharge of additional nitrogen that would exacerbate the current extent of over-allocation. Hence the proposed allocation would be contrary to the NPSFM unless it came within the limited possible reallocation discussed above at [44] and [45].

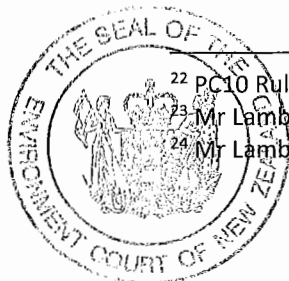
Review of resource consents that have already been issued

[54] Under Rules LR R8, 8A, 9, 10 and 11 the Regional Council reserves control over circumstances that may require a review of a Nitrogen Discharge Allocation under s 128 of the RMA. Mr Lamb considered that for the avoidance of any doubt a rule should be added to PC10 to clarify that a review will be undertaken in 2032 to alter the NDAs of properties/farming enterprises to provide for the reallocation to Settlement land. He explained that as the Managed Reduction Targets will not change as a result of the reallocation to Settlement land, while the 2032 NDA for a farming enterprise would be a reduced figure, nothing else in the resource consent and current NMP would be required to change. On this basis he considered that there is no cost incurred in substantially changing already issued resource consents or in updating NMPs as consent holders would have their resource consents reviewed and changed only in relation to the 2032 NDA figure. Subsequent reviews of NMPs would provide the pathway for how the reduced 2032 NDA would be met but the planning for meeting the 2027 MRT would not need to alter.²⁴

²² PC10 Rules LR R8 and LR R9

²³ Mr Lamb, Supplementary evidence dated 26 August 2020, Annexure 1.

²⁴ Mr Lamb, EIC at paragraphs 65 and 66.



[55] Ms Robson considered that Mr Lamb's approach is an appropriate way to reduce the allocations of existing farming land use activities.²⁵ Mr Willis also recommended that the headroom required to enable reallocation be created by additional reductions from farmers in 2032²⁶ and considered that a new rule should be included in PC10.

[56] While noting the view of counsel for the Regional Council that consents were granted on the understanding that appeals against PC10 were still live and, accordingly, nitrogen limits may need to be revisited, there is nothing in the conditions of consents granted to state that. Accordingly, we agree with the expert witnesses that a new rule should be included in PC10, which will provide the basis for a review of consents in accordance with s 128 (bb) of the RMA.

Evaluation

Establishing an appropriate quantity of nitrogen to be reallocated

[57] A consequence of allocating nitrogen to Settlement land is that allocations to existing dairy and drystock farming operations will have to be reduced. In accordance with RNR Policy WL 5B(a), we must ensure an equitable balance between the two competing interests. To enable us to achieve an equitable outcome, we need to consider the potential costs to existing farming operations and the potential benefits to Settlement land of reallocating nitrogen. In obtaining that understanding, we need to first consider what quantity of nitrogen is appropriate.

[58] The Council's evidence is that if allocation is to be made on a broadly equivalent basis to the 11.9 tN/y allocated to TTWM land, the appropriate allocation to Settlement land is 8.2 tN/y. We have indicated earlier that we have difficulty accepting this approach but it is useful as an indication that the allocation to Settlement land should be less because of the express policy support the RPS provides in IW 1B for TTWM land compared to Settlement Land.

[59] The initial focus of our evaluation then becomes an examination of the "credible future" land uses identified by both NCG and Federated Farmers. We acknowledge that both sets of land uses are intended to be indicative only and are neither "resource consent ready" nor "shovel ready". We also acknowledge that any allocation of additional nitrogen must be set in an environment of uncertainty as to what land use changes owners may wish to make in the

²⁵ Ms Robson, EIC Attachment CBR1 at paragraph 12.

²⁶ Mr Willis Statement of supplementary evidence dated 26 August 2020 at paragraph 5.3.



future. However, they represent the proposals put forward by the parties after due consideration over a six-month period, and we rely on them as our starting point.

[60] As noted earlier, all parties agree that an additional allocation of nitrogen to Settlement land is appropriate. The parties identified different levels between 3.5 and 8.67 tN/yr. There was no suggestion to us of any reason to go outside that range and accordingly we treat those as the bounds for our determination. We now consider what the appropriate allocation should be within those bounds.

What are credible future land uses for the purposes of PC10?

[61] Firstly, credible future land uses must reflect the types of land uses identified in the Interim Decision and anticipated by RPS Policy IW 1B in relation to TTWM land. They must be consistent with the purpose of the allocation set out in paragraph [22] above and must be able to be believed; convincing; and capable of persuading people that something will happen or be successful.

[62] NCG is seeking an allocation of 8.67 tN/y, based on credible future land uses described in different ways in different evidence. Ms Robson proposed in her evidence that a definition of “tenable aspirations”²⁷ be included in PC10. Other evidence described credible futures as “have commercial potential and can be developed in an environmentally and culturally sustainable way”²⁸, “indicative and non-exhaustive credible investment possibilities”²⁹, an “emphasis on the capability of that land to sustain the proposed use”³⁰ or “investment possibilities which the group’s members have identified that they might wish to undertake.”³¹

[63] Credible future land uses described in this way can only be considered as possible or aspirational and such uses require supporting analysis to demonstrate they are credible within the scope of PC10. To provide this support, NCG engaged Dr Meade.

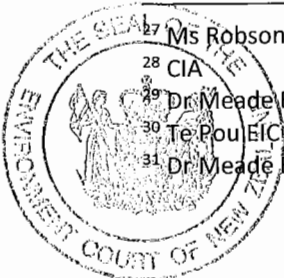
[64] By way of a summary, Dr Meade concluded that the value to NCG of a free allocation of 8.67 tN/y instead of the 3.5 tN/y proposed by Federated Farmers, is approximately \$1 million to just under \$1.5 million in 2020 dollars. He estimated the overall economic benefits to be in

²⁷ Ms Robson, definition of “Credible Futures” in proposed amendments to PC10.

²⁸ CIA
²⁹ Dr Meade EIC at paragraph 18.

³⁰ Te Pou EIC at paragraph 22.

³¹ Dr Meade EIC at paragraph 13.



the order of \$4.6 million and the economic costs to farmers to be only as high as \$1.4m, and possibly as low as \$0.1 m, based on uniform reallocations from one or more sectors. He considered there are likely to be social and cultural benefits to recipients of the nitrogen allocation but no material social or cultural costs to those from whom nitrogen is taken.³²

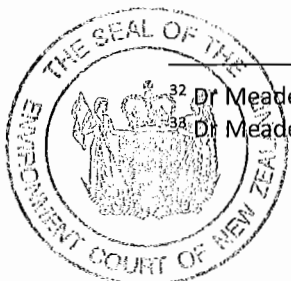
[65] Dr Meade based his initial analysis on there being an economic benefit to Settlement land owners from the reallocation of nitrogen, but there would be no equivalent loss to dairy and dry stock farmers. He hypothesised that changes in farm operations could be made to reduce nitrogen discharges with little cost and potentially an economic benefit to those losing nitrogen. For the reasons we give below, we do not accept his hypothesis.

[66] He acknowledged that some or all of the nitrogen-enabled investments he relied on to support his conclusions might currently not be viable or feasible. For example, viability may be affected due to the cost of acquiring New Zealand Units (NZUs) under the Emissions Trading Scheme (ETS) when changing pre-1990 forest land into alternative uses currently being prohibitive, while feasibility may be affected due to the need for other planning/regulatory approvals. We note that such considerations make the credibility of such investments questionable and give rise to significant uncertainty about Dr Meade's economic assessments.

[67] Further, as raised by counsel for the Council and Federated Farmers in cross-examination and in closing submissions, Dr Meade:

- (a) did not attempt to verify the nitrogen discharge or regulatory requirements of each of the investments;³³
- (b) assumed that CNI Housing dwellings will be available for sale on the open market, whereas CNI has a clearly stated intention not to sell its land;
- (c) proposed apple orchards as a credible land use, without reference to or analysis of the reasons why the only two previously existing orchards in the catchment no longer operate;
- (d) based his modelling assumptions relating to cider production on reported financials and other details for Zeffer Cider, which is the largest cider producer

³² Dr Meade, Evidence in reply dated 31 August 2020 at paragraphs 16 and 21.
³³ Dr Meade EIC at paragraph 18.1.



in New Zealand based in Hawkes Bay. Hawkes Bay is one of the largest apple-growing areas in New Zealand, which is a very different set of circumstances to those existing in the Lake Rotorua catchment;

- (e) based his modelling assumptions relating to a sawmill on an investment announced by Red Stag in 2018 for a cross-laminated timber mill. Red Stag has an annual turnover of over NZ \$220 million and employs approximately 300 staff - this brings its relevance into question because of its very large scale compared to the 40 staff anticipated to be employed at the NCG proposal;
- (f) used a nitrogen leaching rate for CNI market gardening of 78 kg/ha, which is greater than the 72.8 kg/ha/y at the top of the range for dairy farms, bringing its appropriateness in a severely nitrogen constrained catchment into serious question;
- (g) did not address the availability of the required areas of suitable land for proposed developments or the potential for conflicts with existing or competing future land uses. As examples, there appear to be several intended uses on two particular pieces of land at Hamurana and Tarawera Road, potentially with insufficient land area and/or significant constraints in terms of reserve status and well-established existing uses;
- (h) shows in his Table 3.6 that the impact of a free allocation of nitrogen is minor for more than half the credible future land uses identified;
- (i) based his conclusions on returns at the top end of ranges he cited; and
- (j) selectively used option values when net present values were strongly negative to assess the allocation value impact of free nitrogen allocations in his Table 3.6.

[68] Mr MC Copeland, a consulting economist, was engaged by Federated Farmers to present evidence in response to the evidence of Dr Meade. His evidence included the following criticisms:

(a) Notwithstanding the sophistication of Dr Meade's modelling technique, he had to make a number of simplifying assumptions to obtain quantitative results such



that the analysis could not be relied upon as being indicative of the additional net benefits for NCG iwi from reallocating 8.67 tN of NDAs to Settlement land.³⁴

- (b) The net benefits to NCG iwi from the reallocation of 8.67 tN of NDAs to Settlement land estimated by Dr Meade were subject to considerable uncertainty and not significant in the context of the considerable sums of money assumed by Dr Meade to be invested, the revenue flows estimated from these investments and the estimated ongoing annual expenditures.

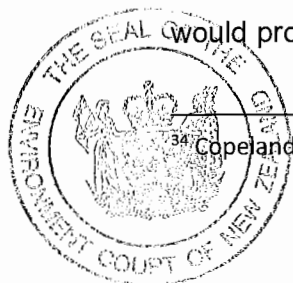
[69] Overall, Dr Meade's evidence does not satisfy us that a number of the identified land uses can be considered credible. As stated in our Interim Decision, we consider papakāinga, tourism ventures and visitor accommodation to be credible future land uses. We also consider that short rotation carbon crops and various forms of horticulture including orcharding are or could be practicable in certain situations. However, we do not consider that the evidence demonstrates that land use for these purposes at the scale proposed is likely to be credible within the Lake Rotorua catchment, with the different factors that need to be taken into account.

[70] We consider the reallocation of 3.5 tN/y proposed by Federated Farmers is likely to be sufficient to enable many of the land uses anticipated by our directions in the Interim Decision. However, we also consider that some additional allowance is appropriate to enable progress to be made towards other uses that could be developed on Settlement land to provide wider social and economic benefits in the longer-term. To recognise the different RPS approach compared to TTWM land, we consider an allocation of 5tN/y to Settlement land is appropriate. We consider this represents an appropriate differential with the allocation for TTWM land that reflects the approach in the operative RPS. Referring back to paragraph [358] of the Interim decision, the evidence does not demonstrate to us that there is a compelling reason to allocate more than 5 tN/y.

Source of nitrogen to be reallocated to Treaty settlement land

[71] The Council evaluated 15 options for sourcing nitrogen to reallocate to Settlement land. The Council recommended that it occurs on the basis of an equal percentage reduction from what was previously proposed in the decisions version of PC10, which for an 8 tN/y reduction would produce a 1.62% reduction on all dairy and drystock properties, holding the bottom of

³⁴ Copeland Rebuttal evidence at paragraphs 2.8.3 and 2.10.



the range constant.³⁵ Mr LA Matheson, a pastoral agricultural sector consultant was engaged by the Regional Council to undertake an assessment of the likely impact on operating profit and cash surplus for farms providing a combined reallocation of approximately 4 and 8 tN/y to Settlement land. He gave evidence that³⁶:

I consider that the expert evidence previously presented to the Environment Court by the panel of economic experts has adequately demonstrated to the Court that as allocations of NDA are reduced, the negative economic impact on farm businesses ultimately gets worse the further you change farm system (sic) to reduce N losses below the root zone.

Reducing current nitrogen discharge allowances (NDA) by as much as 1.6% might be expected to result in a small loss of profitability for most farming systems that end up with a reduction in NDA from that currently provided for under PPC10. However, this will vary between properties.

Across the farm types analysed such additional reductions in allocation seem unlikely to cause farm systems to change sufficiently to result in massive loss of profitability – the so called “tipping point” at which the cost of abatement goes up exponentially. However, without modelling individual farm systems, it is impossible to conclude this would be true for all farms.

It must also be noted that for some farms, achieving the original NDAs is already expected to result in negative available cash after interest. As such, any additional reductions in NDAs would make these positions even more untenable.

[72] Based on the evidence of the other witnesses for FFNZ, Mr Willis considered that the most equitable and least economically impactful means of reallocating nitrogen is to lower the Upper NDA Boundary for both dairy and drystock as set out in Table LR 5, and increase the standard sector range reduction set in Table LR 5.³⁷ He said:

This means that the reduction is generally shared across the pastoral sector, except that those who are at, or below, the bottom of the sector ranges will not be affected. Those farms that are the highest N losses will potentially bear more of the burden.

Again, for reasons of equity, I propose that the burden be shared equally between the drystock and dairy sectors.

[73] Mr IF Millner, a consultant land management advisor to Federated Farmers, addressed the likely impact on individual farmers of a requirement to achieve additional nitrogen reductions so that Settlement land can be developed. He found that:

³⁵ Mr Lamb EIC at paragraph 59 and Annexure 2.

³⁶ Mr Matheson EIC at paragraphs 43, 8 (i) and (iii) and 40 respectively.

³⁷ Mr Willis EIC at paragraphs 8.3 and 8.4.



3.2 The cost to individual farmers will depend upon where they are at on the nitrogen cost abatement curve. That curve is not linear and will vary depending on farm system, farm type, farm management and location.

3.7 The impact on farmers will also depend on debt levels. Farmers with higher debt will have less ability to absorb higher mitigation costs or reduced profits associated with this or farm system or land use change. The cost of additional nitrogen reductions will also impact on the resilience of many farm businesses, and their ability to respond to drought or economic shocks (such as commodity price fluctuations or the impact of biosecurity risks).

[74] Ms Robson considered that in the event that the Court were to determine that a standard reduction in nitrogen discharge allowances was to apply to all dairy and drystock farmers, the answer provided by Mr Lamb is an appropriate way to give effect to this change of allocation.

[75] Dr Meade noted he was aware that the Council suggested a proportionate 1.6% reallocation of NDAs, if an 8 tN/y reallocation is made to NCG from dairy and drystock farmers, subject to certain exceptions. He observed that, in general, this would not be the least-cost way to achieve the desired total level of NDAs.

[76] Dr Meade considered that Table 5 of Mr Matheson's evidence points to certain representative farm models for which a further reduction in their NDA allocation, below that currently contemplated without a reallocation to NCG, would *increase* their modelled EBIT/ha/year. He considered that 7.9 tN/y could be found from five farms and would result in "win-win" outcomes, leaving only a small quantity of additional nitrogen needing to be taken from other farms. In his evidence in reply, he concluded that uniform reallocation of 8.67 tN/y from all farms would result in a cost of \$1.4 million to farmers, but this could be reduced to \$100,000 if specific reallocations were taken from specific sectors.

[77] In response, Mr Millner considered Dr Meade's approach to be based on an oversimplified and unrealistic assumption in the context of farming within the catchment under PC10. Mr Millner said when considering nitrogen loss reductions of the magnitude required by many farmers in the Lake Rotorua catchment, the opportunity for increased efficiency is limited and that in general these farmers will experience either the loss of cashflow or capital, or both. He said that Mr Matheson's analysis, on which Dr Meade relied, is based upon hypothetical,



averaged scenarios constructed at the sub farm (i.e. block) level and are not intended as an indication of overall farm outcomes.³⁸

[78] Mr Matheson addressed Dr Meade's approach and conclusions in some detail and, importantly in our view, set out his opinion as follows:

... Dr Meade has used the modelling output beyond its acceptable purpose or intent, and is interpreting it to a degree of granularity and specificity that it simply cannot support. As such, it is my opinion that his conclusion that "that a win-win 7.9 tN of NDA reallocation can occur from drystock farmers in the Lake Rotorua Catchment to NCG without cost to those farmers" cannot be supported by the analysis he presents.

[79] Dr GJ Doole, an economist advising the Council, presented evidence on the availability of win-win outcomes from the economic modelling. He did not consider the Court can have any degree of confidence in the method applied by Dr Meade in order to reach his conclusions, primarily because he has restricted his analysis to a small set of farms, placing what he considers is an unjustified level of importance on atypical results.³⁹

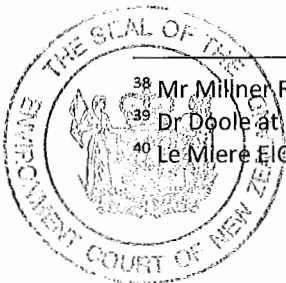
[80] Dr Meade provided further analysis based on reallocation of nitrogen on a sector basis, relying on the same farm modelling. Both Mr Matheson and Mr Millner again considered Dr Meade's approach inappropriate.

[81] Dr Le Miere said that the cost to farmers (collectively) of purchasing the nitrogen reductions required to enable development of Settlement land would be around \$1,000,000 at 3.5tN and \$2,500,000 at 8.2tN, assuming a conservative cost of \$300/kgN and assuming there was nitrogen available to purchase. (There is some suggestion that the going rate in the Lake Taupo catchment is \$400/tN). He then referred to evidence in the Stage 1 hearing from Dr Doole, Mr Lee Matheson and Mr Journeaux, which was that the price of leasing nitrogen in a frictionless market could be \$20-\$30/kg per annum. He also referred to a leasing price of \$186/kg per annum if frictions were present, but Dr Doole advised that was not an appropriate assumption. At \$30/kgN the cost to farmers would be \$105,000 (at 3.5tN) or \$246,000 (at 8.2tN) per annum.⁴⁰

³⁸ Mr Millner Rebuttal evidence at paragraphs 5.1 to 5.3.

³⁹ Dr Doole at paragraph 17.

⁴⁰ Le Miere EIC at paragraphs 22 to 24.



Findings in relation to the source and method of reallocation

[82] We consider Dr Meade's proposed method would be inequitable, high risk at best and more likely than not impracticable. We find that the most appropriate basis of reallocation to be a common percentage reduction on all dairy and drystock properties as proposed by the Council and Federated Farmers. This was not resisted in the closing submissions of counsel for NCG.⁴¹

Timing of reallocation

[83] The intent of PC10 is that NDAs must be achieved by 1 July 2032. To remain consistent with this intent, the reallocation from existing land uses must occur at that date unless there is an earlier surrender of an equivalent quantity of NDAs.

Allocation of nitrogen to different Settlement land and nitrogen accounting

[84] Mr Willis considered, largely for reasons of plan consistency and equity, that an allocation for farming activities should be expressed as a maximum area that can be developed - being the same approach that applies to TTWM land. He proposed a complex mechanism whereby the area of land may be increased or decreased provided the total nitrogen quantity remains within the overall allocation to Settlement rural land. He considers that a further 1tN/yr should be removed from the rural sector allocation and be made available within the Council's nitrogen accounting system for urban uses on Settlement Land, i.e. for papakāinga, tourist accommodation and the like.

[85] NCG considered that the allocation should be provided to the Settlement land blocks directly.⁴² Ms Robson proposed that allocation is made directly to blocks of land nominated by the two Settlement land owners, rather than any form of pool approach.⁴³ The allocation is to be 85.5% to CNI and 14.5% to Ngāti Rangiwewehi, as set out in Table LR 6B in NCG's proposed plan changes included as Annexure B to the closing submissions of counsel for NCG.

[86] Mr Lamb considered that an approach involving allocation of nitrogen to two parcels of land (one for Ngāti Rangiwewehi and one for CNI) would be considered to afford greater

⁴¹ Closing submissions at paragraph 37.

⁴² Closing submissions at paragraph 1 (c).

⁴³ Ms Robson EIC at paragraph 13 (d).



recognition to the cultural values of mana and rangatiratanga, and would be in keeping with how the majority of NDA is treated within the catchment. He said⁴⁴:

Overall the Regional Council considers that an approach of Direct Provision should be used, which would give a 'lump sum' allocation to nominated blocks that could be moved about as required in due course and accounted for as it was required for development. On balance the cultural values provide the direction for the provision of the reallocation.

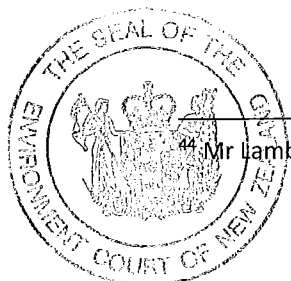
[87] From our understanding of what is proposed by the parties, both allocation methods provide for a set maximum allocation of nitrogen with flexibility to enable it to be used on Settlement land, using various combinations of land area and associated nitrogen loss rates to be determined in the future, subject to existing or modified rules in PC10. Based on that understanding, we consider the less complex method favoured by the land owners and regulator should be adopted, that is direct allocation to two blocks of land to be nominated by CNI and Ngāti Rangiwewehi.

[88] We consider it desirable that maximum flexibility is retained to enable the nitrogen to be used for purposes determined by the land owners at an appropriate time in the future. We do not consider it should be predetermined by setting separate allocations for rural and urban activities in PC10 that may constrain arbitrarily and unnecessarily how the nitrogen ultimately might be used.

[89] Mr Lamb explained the process that will be followed for non-farming activities in Annexure 1 of his EIC which was not contested and which we accept as appropriate. From the evidence generally, we understand that nitrogen allocations for non-reticulated developments, for example papakāinga, will be adjusted over time using the House reference file process.

[90] Ms AT Lowe, an Environmental Manager for Infrastructure with the Rotorua District Council, gave evidence on behalf of NCG and addressed how accounting for a transfer of nitrogen from rural to an urban environment could occur. She explained that the nitrogen load to the Lake following wastewater treatment at the Rotorua wastewater treatment plant (**WWTP**) is estimated to be 1.4 kg of nitrogen per household unit equivalent (**HUE**) volume of wastewater discharged to sewer during the benchmarking period. She said that:

⁴⁴ Mr Lamb, EIC at paragraphs 76 and 80.



to ensure there is no overall increase in the sustainable load of N to the Lake as land uses change, 1.4 kg of N to the Lake per HUE of wastewater needs to be provided for and accounted for and that work is currently being done on the implementation and accounting mechanisms to achieve this through a memorandum of understanding in relation to the WWTP.

[91] We consider this is an appropriate mechanism for accounting for nitrogen currently allocated to rural activities and transferring to an *urban* environment for discharge to the lake in the future. It provides certainty and flexibility to accommodate a range of possible land use changes in the future.

[92] The Regional Council will need to keep a register of any nitrogen allocated from the total allowances, with the relevant quantity authorised for any new land use activity being subtracted from the total remaining unallocated on the date a consent is granted.

[93] Any nitrogen that is not authorised by land use consents from the total allocations available will remain as unallocated in the accounting system.

Adjustment of nitrogen allocation to pastoral land use activities to take account of different versions of OVERSEER

[94] We have reviewed the statement of agreed position dated 4 September 2020 between the Regional Council and Federated Farmers relating to reference files. Based on that, we accept that the Council's proposed approach for rural activities should apply to the use of reference files which is explained as ... *assigning allocation to particular parcels of land with an NDA that is expressed as a percentage of the relevant reference file*. We consider the relevant reference file for rural activities will be the drystock reference file and that an appropriate adjustment will be made at the time land use consent is granted for a new rural activity.

Nitrogen trading

[95] To ensure equity and fairness and to implement the concept of rangatiratanga embodied in Policy IW 3B, it is appropriate that from the time nitrogen is reallocated to Settlement land, trading occurs in accordance with Rule LR R10.



Resource consent requirements

[96] Controls on nitrogen discharges from rural land in the Lake Rotorua catchment will be implemented in three ways:

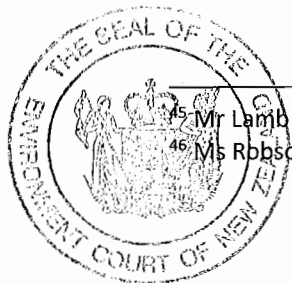
- (a) Any developments where wastewater is discharged to an urban sewerage system will be managed in accordance with the memorandum of understanding for the Rotorua WWTP;
- (b) Any developments where wastewater from residential-type or similar developments is discharged on-site will be managed in accordance with the On-site Effluent Treatment Regional Plan (OSET); and
- (c) Nitrogen discharges from pastoral and other productive activities will be managed in accordance with PC10, which we consider further below.

[97] The Council and NCG considered that the appropriate resource consent activity status for Settlement land nitrogen discharges is controlled, while Federated Farmers proposed controlled activity status for low intensity farming and restricted discretionary activity status for farming. For the Council, Mr Lamb considered that for consistency with the existing rules framework, the identified credible future land uses should be treated as controlled activities.⁴⁵ However, should the Court find otherwise, the Council proposed a new rule specifically for farming activities on Settlement land in its Reply submissions. In her supplementary evidence dated 4 September 2020, Ms Robson said that controlled activity status can also be seen as appropriate, proposing a specific new rule for a land use change from plantation forestry or bush/scrub on Settlement land to "other land use activities" as a controlled activity.⁴⁶

[98] Mr Willis considered that the changed use of Settlement land for farming (as distinct from low intensity farming) should be subject to consent as a restricted discretionary activity, similar to TTWM land. He considered that conversion of land from forestry to a more intensive use will have a range of adverse effects aside from the leaching of nitrogen that need to be managed to protect lake water quality and the restricted discretionary consent approach can ensure the broad management of effects.

⁴⁵ Mr Lamb Rebuttal evidence at paragraph 48.

⁴⁶ Ms Robson Statement of summary of evidence dated 4 September 2020 at paragraph 15.



[99] In the case of both TTWM land and Settlement land, land use nitrogen allocations increase under PC 10 while they decrease on dairy and drystock land uses, which have controlled activity status. On that basis, it could be argued that as increased nitrogen discharge allowances for land uses on TTWM land are accorded restricted discretionary activity status, increased discharge allowances on Settlement land should be accorded the same status. However, it is necessary to consider also that the transfer of nitrogen between properties is a controlled activity, and this would result in an increased NDA on some farms compared to their allocated NDA.

[100] Under controlled activity rules for farming on properties larger than 40ha and the transfer of nitrogen between properties, the Regional Council requires a NMP and reserves control over circumstances that may require a review of a Nitrogen Discharge Allocation. This control provides a mechanism for the Council to assess the potential for increased effects on the lake at the time of resource consent application and set an appropriate NDA.

[101] We consider that greater consistency with the overall architecture of PC10 will be achieved by making the activity status for changing land use on Settlement land from forestry and bush and scrub the same as those in the majority of PC10, that is as a controlled activity.

[102] In other respects, existing rules will apply, except that nitrogen allocations to Settlement land will not be subject to Managed Reduction Targets.

Other Changes to Plan provisions

New policy to address nitrogen allocation to Settlement land

[103] Mr Lamb did not consider that a new policy is required if the direct provision approach is adopted. This is because the reallocation simply becomes the allocation to land and there is no need for a policy to guide subsequent decisions, because there are no further decision-making steps proposed. In comparison, he considered that using a pool approach such as that proposed by FFNZ would need a policy to guide the application of the proposed rule because that ongoing decision-making process contemplated would be guided by policy.

[104] We consider a new policy is required to provide clarity as to the purpose of the allocation, as follows:



LR P12A Allocate 5tN/y to Settlement land to enable its conversion from plantation forestry and bush/scrub to other activities for use in accordance with an approved Nutrient Management

Plan to provide for the owners' social, economic and cultural wellbeing while maintaining and safeguarding the land's mauri.

Addition to Method LR M2(c)

[105] The term "attenuation" is to be specifically included in the method, as agreed by the Regional Council in response to the Court's minute dated 23 April 2020. The amended wording is:

- (iii) *review of the assumptions behind and inputs into the lake model, ROTAN, catchment nitrogen and phosphorus loads (including attenuation), and any other model, limit or target relied upon.*

Additions to the Method LR M5 (g) and (k)

[106] The addition to (g) is made based on a proposal by Federated Farmers, which is largely supported by the Regional Council to provide more detail for the accounting methodology. We agree with the Regional Council that "rural" as proposed by Federated Farmers is superfluous and we have deleted it. We have added provision for development that requires a nitrogen allowance to meet OSET requirements. The proposed additions are shown underlined:

- (g) *Land use change (including subdivision) must not increase the total nitrogen load to Lake Rotorua and requires sufficient nitrogen allocation (i.e. NDA, offset, to meet OSET requirements, or where Settlement Land is converted to urban use, available nitrogen as demonstrated by the nitrogen accounting system);*

[107] Method LR M5(k) is to read "Establish a register of emerging issues, potential additions to, and changes to recommended application practice for, the OVERSEER model, and provide regular updates to the managers of the model".

New Rule LR R11B Controlled – Land use change from plantation forestry or bush/scrub on Settlement land in accordance with Policy LR P12A

[108] The conversion of plantation forestry and/or bush/scrub on Settlement land to other land uses within the Lake Rotorua groundwater catchment in accordance with Policy LR P12A

is a Controlled Activity subject to the following conditions:



- (a) No more than a combined total of 5 tonnes of nitrogen per year (based on OVERSEER Version 6.2.0) may be authorised under the provisions of this rule in addition to the relevant Nitrogen Discharge Allocations applying to forestry or bush/scrub respectively;
- (b) A 2032 Nitrogen Discharge Allowance has been determined for the land area subject to a change of use in accordance with Schedule LR One and Policy LR P6 and the 2032 NDA has been made available;
- (c) A Nutrient Management Plan has been prepared for the new land use, and certified by a suitably qualified and experienced person to have been prepared in accordance with Schedule LR Six; and
- (d) Suitable good management practices have been identified for implementation that will avoid or reduce the potential adverse effects of the land use activity.

Bay of Plenty Regional Council reserves control over the following:

- (i) The approval of the 2032 Nitrogen Discharge Allocation for the land subject to the application, set in accordance with Schedule LR One and Policy LR 6,
- (ii) The suitability of the land for the purposes set out in Policy LR P12A and any methods proposed to avoid, remedy or mitigate any adverse effects on the water quality in Lake Rotorua.
- (iii) The portion of the Settlement land nitrogen allocation remaining to be allocated.
- (iv) Setting an appropriate frequency for the submission of either:
 - (a) an OVERSEER file; or
 - (b) an alternative nutrient budgeting model, in accordance with Policy LR P15, when OVERSEER is not suitable for modelling the land use activity;
 prepared by a suitably qualified and experienced person, demonstrating implementation of the Nutrient Management Plan.
- (v) The form of information and documentation to support either:
 - (a) an OVERSEER file including data inputs and protocols; or
 - (b) an alternative nutrient budgeting model, including data inputs and protocols in accordance with Policy LR P15, when OVERSEER is not suitable for modelling the land use activity;



- (vi) The adequacy of self-monitoring, record keeping, information provision and site access requirements to demonstrate on-going compliance with a Nutrient Management Plan.
- (vii) The duration of the consent to reflect the nature, scale and robustness of any land use mitigation options proposed and Policy LR P16.
- (viii) Circumstances that may require a review under s 128 of a Nitrogen Discharge Allocation, Nutrient Management Plan or consent conditions including a change to activity size, the sale or disposal of land, changes in lease arrangements, significant farm system changes and subdivision, or changes to the Regional Policy Statement or Regional Natural Resources Plan resulting from Methods LR M2 and LR M3.
- (ix) Implementation of the Nutrient Management Plan, including the mitigations and methodology to be used to meet the Nitrogen Discharge Allocation.
- (x) The requirement for a contractual written agreement with the landowner of any leased land agreeing to proposed nitrogen loss mitigation to be undertaken on the land.

Applications for controlled activities under this rule do not require the written approval of affected persons and shall not be publicly notified except where the Regional Council considers special circumstances exist in accordance with Section 95A(9) of the RMA.

New Rule LR R11B Controlled – Review of resource consents

[109] The following rule is to be included to avoid any doubt that existing resource consent will or may be reviewed in 2032:

Lake Rotorua nutrient management resource consents issued before [date PC10 becomes operative] may be reviewed under sections 128 and 129 of the RMA to ensure Nitrogen Discharge Allocations that apply at 1 July 2032 give effect to Table LR 6A.

[110] We turn now to a number of consequential and lesser matters which the Court directs are to be made.



New general Advice Note for rules

[111] Add the following:

6. *Until 1 January 2025, additional consent requirements under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 may apply to changes of land use in the Lake Rotorua Groundwater Catchment over and above those required under PC10.*

Amendment to Rule LR R10

[112] This is a consequential amendment identified by the Regional Council.⁴⁷

- (c) *A Nutrient Management Plan has been prepared for both the source and destination land, and certified by a suitably qualified and experienced person that each Nutrient Management Plan has been prepared in accordance with Schedule LR Six, except where the source land is in plantation forestry in which case no source land NMP is required.*

Addition to Rule LR 11A

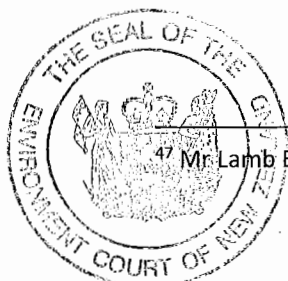
[113] Add the following:

Advice Note:

- 1 *Until 1 January 2025 the conversion of plantation forestry to pastoral land use is also subject to the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and may need a discretionary activity consent under Regulation 17.*

Amendment to Rule LR R 13

[114] This is to be amended as underlined to give effect to the NESF:



The discharge of nutrients onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1)(b) of the Resource Management RMA is a permitted activity, provided:

- (i) the land use associated with the discharge is authorised under Rules LR R1 to LR R11A; and
- (ii) The discharge is not a discretionary activity under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

New and amended definitions

[115] The following definitions are to be added or amended as underlined:

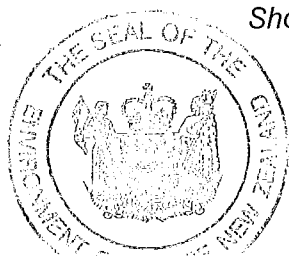
Settlement land: Rural land within the Lake Rotorua Groundwater Catchment returned in accordance with the Ngāti Rangiwewehi Claims Settlement Act 2014 or identified as CNI Forests Land in the Central North Island Forests Land Collective Settlement Act 2008 on or before 31 December 2019.

Effective area: The part of the property/farming enterprise that is used for grazing, cultivation, cropping, short rotation carbon cropping, horticulture, effluent disposal and includes areas of grazed trees.

Farming Activity: Dairy, dairy support and drystock activities, cropping, short rotation carbon cropping and horticulture, but not including plantation forestry or bush/scrub.

Drystock The effective area used for non-dairy activity, including grazing of sheep, beef cattle, goats, horses, deer, cropping, short rotation carbon cropping and dairy support but excluding plantation forestry and bush/scrub.

Short rotation carbon cropping: The planting, maintenance and/or harvesting of tree species for purposes other than the production of



timber, timber products, pulp and paper and which are not grazed by farmed livestock.

[116] The new definition of *short rotation carbon cropping* and amendments to other definitions related to it were supported by both Mr Willis and Mr Lamb. While not strictly within the scope of any submission or appeal, it clarifies the provisions of PC10 without altering their substance and so comes within our power under s 292 of the RMA to direct an amendment for the purpose of remedying any uncertainty.

Amendments and addition to Schedule LR One

[117] The following note is to be added after note a) below Table LR 5:

- b) *the 2032 Nitrogen Discharge Allocations are subsequently adjusted using Table LR 6A.*

[118] The following notes are to be added after the note below Table LR 6:

D. 2032 Nitrogen Discharge Allocation Adjustment

- *The 2032 Nitrogen Discharge Allocations (NDA) for the Dairy and Drystock sectors are adjusted to deliver the outcomes specified in Table LR 6A.*
- *A standard reduction of 1% (to be confirmed by The Regional Council to reflect the 5tN/yr reallocation) of the NDA across the Dairy and Drystock sectors is applied except that the lower range boundaries are maintained at their original positions.*
- *All existing Lake Rotorua nutrient management resource consents will have their conditions reviewed to reflect Table LR 6A.*
- *The Managed Reduction Targets for the period up to 1 July 2032 (from Table LR 6) remain the same in relation to the adjustment, i.e. the readjustment is only required from 1 July 2032.*



[119] The Regional Council is to complete Tables LR 6A and LR 6B to provide for a nitrogen reallocation to Settlement land of 5tN/y and add the notes as set out below.

Table LR 6A: Adjusting allocation parameters and figures

	Dairy	Drystock
Further sector % reduction from NDA		
Lower Nitrogen Discharge Allocation range boundary		
Upper Nitrogen Discharge Allocation range boundary		
Resulting KgN (OVERSEER® 6.2.0)		

E. Amendment of Nitrogen Discharge Allocation

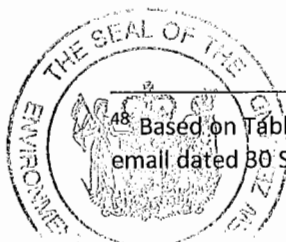
- *The Nitrogen Allocations to the following blocks are amended as follows:*

Table LR 6B: Nitrogen Allocation to Settlement land (in OVERSEER 6.2.0)

<u>Description</u>	<u>Original allocation</u>	<u>Reallocation⁴⁸</u>	<u>Adjusted allocation</u>
Section 3-5 SO 388233, held in record of title 507546 (within the Lake Rororua rural area)		<u>85.5% of 5tN</u>	
SA68A/368 (within the Lake Rororua rural area)		<u>14.5% of 5tN</u>	

Tables 6A and 6B notes:

- *The reallocated nitrogen remains in the Regional Council's nitrogen accounting system unused until drawn on for a particular consented activity. At the time a particular draw down occurs, an adjustment will be made to account for any changes in OVERSEER® versions. Allocations to tourism, housing and similar activities will be adjusted in accordance with the House reference file system. Rural activities such as horticulture and market gardening will be adjusted in accordance with the Drystock reference file system.*



⁴⁸ Based on Table LR 6B from Appendix B – PDF version of NCG proposed provisions to PC10 submitted by email dated 30 September 2020.

- *The allocations can be used for any land use complying with Policy LR P12A and will be expressed using the appropriate reference file for the use.*

[120] A new section H. Non-Standard Circumstances is to be added as follows

- *If new farming activities are being established as a result of transferring NDA to areas of plantation forestry or bush/scrub conversion, NDAs will be calculated and authorised by Council on the basis of the additional discharge over and above the pre-conversion land use discharge rate. Table LR 4 and LR 6 do not apply.*
- *Where OVERSEER® is not suitable for modelling the farming activity, an authorised alternative nutrient budgeting model that meets Policy LR P15 will be used to establish a Nitrogen Discharge Allocation and Managed Reduction Targets. In determining the extent or proportion of nitrogen reductions required for a property/farming enterprise Council will adopt an approach that achieves an equivalent proportional reduction in nitrogen loss against comparable land uses or sector.*

Amendment to Schedule LR Seven

[121] Bullet point 4 is to be amended as shown underlined:

- *New Nutrient Management Plans will be required to recognise the new Nitrogen Discharge Allocation and any new Managed Reduction Targets for the source and destination land, except where the source land is in plantation forestry in which case no source land NMP is required*

Costs and benefits of reallocating nitrogen and overall planning analysis

[122] Mr Lamb assessed the proposed reallocation of nitrogen to Settlement land against the RPS Policy WL 5B factors, which highlighted only very minor outcome differences when the scale of change being proposed is considered. He said the exception to this is factor (e) "Cultural values", where the reallocation enables Settlement land to undertake a limited amount of development to deliver on some cultural aspirations. He considered that the reallocation does not significantly alter the economic and associated social impacts associated



with PC10 and that it is not possible to say whether the reallocation would result in a better or worse environmental outcome.⁴⁹

[123] We rely on our overall planning evaluation in the Interim Decision to the extent relevant. Ms SA Barns, an economist called by the Regional Council, says the proposal put forward by the Council is both efficient and effective, and we consider the same applies to the reallocation set out in this decision. She also said that at the catchment and district level the marginal impacts of this shift in allocation fall within the margin of error of the existing models, and so any changes that might occur in the wider economy are unlikely to differ significantly from the results presented at the Stage 1 hearing.⁵⁰

[124] From our own evaluation, the scale of the nitrogen reallocation, being approximately 1% of the total quantity available, means any changes in financial costs and benefits from the time of the Interim Decision are within the margins of modelling errors, as noted by Ms Barns, and are unable to be distinguished in any reliable way. However, based on Mr Matheson's evidence, we are satisfied that a reallocation of 5tN/y will result in a small loss of profitability for most farming systems but the scale of change is unlikely to result in massive loss of profitability – the so called “tipping point” at which the cost of abatement goes up exponentially. The additional economic effects on farming land uses will vary from activity to activity, depending on their particular circumstances but the effects will not be significant overall.

[125] We do not accept that “win-win” opportunities will be possible as a result of the reallocation, as hypothesised by Dr Meade. If such situations do or did exist, we consider they would not rely on a requirement to reallocate nitrogen before they were implemented within the new environment that will exist once PC10 becomes operative. We do not consider that Dr Meade's evidence in general provides a reliable basis for determining what economic benefit might result from a reallocation of 5 tN/y, or even if any benefit will be significantly different from the cost to the farming community. Based on the evidence, we do not consider that a case has been made that there will be significant economic benefits resulting from the reallocation.

[126] We do not see that the reallocation will result in any significant changes in terms of environmental effects, but we are satisfied that it will provide cultural and social benefits in terms of enabling a range of activities that NCG has identified as being important to them. We

⁴⁹ Mr Lamb, EIC at paragraphs 55 and 56.

⁵⁰ Ms Barns' EIC at paragraphs 30 and 31.



do not see there will be any significant cultural costs to those providing nitrogen for reallocation, but there could be some social costs arising from increased economic pressures on some farm operations. Overall, we consider the proposed reallocation will achieve the intent of our Stage 1 direction, which was to enable greater use of Settlement land and contribute to meeting the equity and cultural values provisions of RPS Policy WL 5B, within the boundaries set by the current higher order plan provisions.

Overall findings

[127] We consider a reallocation of 5tN/y to Settlement land is appropriate and gives effect to the relevant objectives and policies of the RPS and sections 6(e), 7(a) and 8 of the RMA. The method of reallocation is to be by way of a common percentage reduction on all dairy and drystock properties as proposed by the Council and Federated Farmers, transferred to two blocks of land described in Schedule LR One at Table 6B. Reallocation is to occur on 1 July 2032 unless there is an earlier surrender of an equivalent quantity of NDAs. Trading of reallocated nitrogen can occur in accordance with Rule LR R10. Controlled activity resource consents are required for any activity using reallocated nitrogen.

Decision

- A:** A nitrogen reallocation of 5tN/y from existing dairy and drystock land to Settlement land shall apply from 31 July 2032 in accordance with updated Schedule LR One, Section D.
- B:** The Regional Council is directed to update Tables LR 6A and LR 6B in Schedule 1 accordingly.
- C:** The Regional Council is directed to make the other amendments to Plan Change 10 as set out in this decision and to file and serve a final version of Plan Change 10 for approval by the Court no later than 5 p.m. on Friday 29 January 2021.
- D:** There is no order as to costs.

For the Court



D A Kirkpatrick
Chief Environment Court Judge

