

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

Decision No. [2021] NZEnvC 044

IN THE MATTER of the Resource Management Act 1991

AND of 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 MAORI 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



**DECISION OF THE ENVIRONMENT COURT ON THE FINAL WORDING
OF PLAN CHANGE 10
(12 APRIL 2021)**

[1] By its memorandum to the Court dated 9 February 2021, the Regional Council provided a final version of Plan Change 10 in accordance with the Court's final decision dated 21 December 2020 ([2020] NZEnvC 213), following consultation among the main parties.

[2] The Council also provided, in three appendices, the following further material:

- i) In annexure 1 to Appendix A (which contained the final version of PC10), a list of amendments made to wording of the final version and the rationale for those amendments;
- ii) In Appendix B, and in response to the Court's direction in its final decision, the Council's explanation of how it intends to ensure that no over-allocation of nitrogen occurs in the period up to 2032; and
- iii) In Appendix C, alternate versions of Rule LR11B relating to the controlled activity of land use change from plantation forestry or bush/scrub on Settlement land in accordance with Policy LR P12A.

[3] The amendments listed in annexure 1 to Appendix A are all editorial matters. To the extent that some involve any substantive content, they are proposed to be made using the power in cl 16(2) of Schedule 1 to the RMA to make alterations which are of minor effect or to correct any minor errors. Having reviewed the list, we are satisfied that the changes are appropriate and within the scope of that power.

[4] We have reviewed the explanation in Appendix B and are content that the approach proposed by the Council is consistent with our understanding of how the provisions of PC10 are intended to work. It may be that the particular circumstances of a specific case may present issues, as yet unforeseen, about this approach and so we will say no more than that at this stage.

[5] The matters set out in Appendix C have required further consideration by the Court. The parties sought clarification regarding the wording of Rule LR 11B. We have considered the clarification sought and the alternative versions proposed for the rule as set out in that appendix.

[6] The remaining differences concern the wording of Rule LR 11B(c) and the addition of an advice note to the rule:

- a) The Council and Federated Farmers propose the sub-rule commence with the words “The land use change does not occur before 2032 unless: ...” while the Natural Capital Group propose the wording: “The land use change prior to 2032 may only occur if: ...”.
- b) Federated Farmers propose that the following advice note should be added:

The Regional Council will consider sufficient nitrogen to be available to enable the land use change under condition (c) of this rule only where, and to the extent that, it has implemented reductions in the amount of nitrogen allocated to existing land uses by way of new consents granted after [DATE PC10 becomes operative] or NDA has been surrendered and available nitrogen is demonstrated by the nitrogen accounting system.

The NCG propose that such an advice note be worded as follows:

The Regional Council will consider sufficient nitrogen to be available to enable the land use change under condition (c) of this rule only where, and to the extent that, nitrogen is available according to the nitrogen accounting system

[7] We have concluded that the wording should be aligned with the directive provisions of the NPSFM 2020. We prefer the wording proposed by the Council and Federated Farmers for that reason. We also prefer the wording of the advice note proposed by Federated Farmers as it provides a reasonable definition of the matters that will be considered when deciding if sufficient nitrogen will be available.

[8] We accordingly direct that the following wording of Rule LR 11B be included in PC10:

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

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;
- (c) The land use change does not occur before 2032 unless:
 - Nitrogen has been made available by transfer equivalent to the amount sought for the land use change; or
 - The Regional Council has identified that sufficient nitrogen is available within the nitrogen accounting system to enable the land use change;
- (d) 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
- (e) Suitable good management practices have been identified for implementation that will avoid or reduce the potential adverse effects of the land use activity.

Advice note:

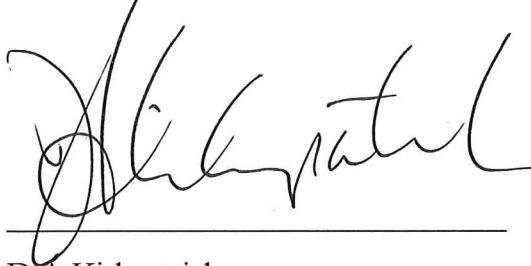
- (1) The Regional Council will consider sufficient nitrogen to be available to enable the land use change under condition (c) of this rule only where, and to the extent that, it has implemented reductions in the amount of nitrogen allocated to existing land uses by way of new consents granted after [DATE PC10 becomes operative] or NDA has been surrendered and available nitrogen is demonstrated by the nitrogen accounting system.

[9] We also note and approve the amendment of the third matter of control in the rule to add the words “and any pre-2032 transfers of nitrogen allocation” so that it reads as follows:

The portion of the Settlement land nitrogen allocation remaining to be allocated and any pre-2032 transfers of nitrogen allocation.

[10] In all other respects, the text of Plan Change 10 set out in Appendix A accompanying the Council’s memorandum dated 9 February 2021 is approved.

For the Court



D A Kirkpatrick

Chief Environment Court Judge

