

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of appeals under clause 14 of the
First Schedule to the Act

BETWEEN

**ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF
NEW ZEALAND (INC)**

ENV-2012-AKL-000078

AND

**FEDERATED FARMERS OF
NEW ZEALAND (INC)**

ENV-2012-AKL-000087

AND

**HORTICULTURE NEW
ZEALAND & AVOCADO
INDUSTRY COUNCIL AND NEW
ZEALAND KIWIFRUIT
GROWERS**

ENV-2012-AKL-000088

Appellants

AND

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under section 279 of the Act

IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

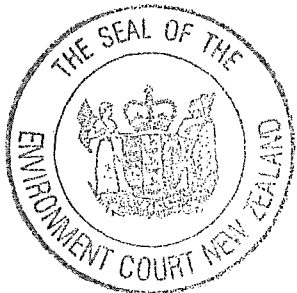
1. The Court has read and considered the appeal and the memorandum of the parties dated 23 May 2013.



2. This consent order relates to the part of the appeals seeking relief in respect of the Topics **ENV-2012-348-000002 General Region-wide: Water Quality / Land Use; ENV-2012-348-0000010 Rotorua Lakes Specific: Water Quality / Land Use; ENV-2012-348-0000011 Rotorua Lakes : Definition / Language** against parts of the decisions by the Bay of Plenty Regional Council on submissions to its Proposed Regional Policy Statement.
3. Royal Forest and Bird Protection Society of New Zealand Incorporated lodged an appeal **ENV-2012-AKL-000078** seeking the following changes:
 - 3.1 At paragraph 6.5.3 rewording of Objective 29 to be consistent with the National Policy Statement on Freshwater Management Objective 1A.
 - 3.2 At paragraphs 6.6.1-3 amendment of policies in Topic 5 to refer to Rotorua Lakes only.
4. Federated Farmers of New Zealand Incorporated lodged an appeal **ENV-2012-AKL-000087** seeking the following changes:
 - 4.1 at paragraph 5.iii amendment to the Water Quality and Land Use chapter to change the focus from land use change to land use management change, and to amend the RPS to address the social and economic impacts of land use change and how that might be mitigated;
 - 4.2 at paragraph 6.iii to amend the regionally significant management issues to refer to land use discharge and not agricultural discharges specifically and to identify all contributors or sources of pollutants that deteriorate water quality;
 - 4.3 at paragraph 7.iii to amend the chapter to recognise and enable positive industry led initiatives; to ensure policies and methods are cost effective, flexible, provide certainty and encourage industry good practice and self-regulation; amend policies to adopt a non-regulatory regime;
 - 4.4 at paragraph 10.iii to amend Policy WL 5B to delete paragraph (d) relating to a future vision for landscape; make provisions for reducing nitrogen discharges such as credits for gorse; include Method 28 as a relevant method for implementing Policy WL 5B.



5. Horticulture New Zealand, Avocado Industry Council Incorporated and New Zealand Kiwifruit Growers Incorporated lodged an appeal **ENV-2012-AKL-000088** seeking the following changes:
- 5.1 At paragraph 5.3 to include a definition of "land and soil disturbance" as set out in the appeal;
 - 5.2 At paragraph 6.3 to include a definition of "land use" as set out in the appeal and amend Objective 29, and Policies WL 1B and WL 4B to include "activity change" in addition to "land use change";
 - 5.3 At paragraph 8.3 to amend paragraphs 6 and 7 of Section 2.10.1 to reflect the impact hydro electricity generation can have on water quality.
6. The following parties have notified a particular interest pursuant to section 274 of the Act in the above topics:
- (a) Horticulture New Zealand, Avocado Industry Council and New Zealand Kiwifruit Growers Incorporated
 - (b) Fonterra Cooperative Group Limited
 - (c) Royal Forest and Bird Protection Society of New Zealand Incorporated;
 - (d) Federated Farmers of New Zealand;
 - (e) Lake Rotorua Primary Producers Collective
 - (f) DairyNZ
 - (g) John Green;
 - (h) James Warbrick;
 - (i) New Zealand Transport Agency (Tauranga Branch);
 - (j) TrustPower Limited; and
 - (k) Te Tumu Kaituna 11B2 Trust, Te Tumu Kaituna 14 Trust, Te Tumu Landowners Group and Ford Land Holdings Pty.



7. The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 279. The Court understands for the present purposes that:
- (a) All parties to the proceedings with an interest in these topics have executed the memorandum requesting this order;
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and confirm to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

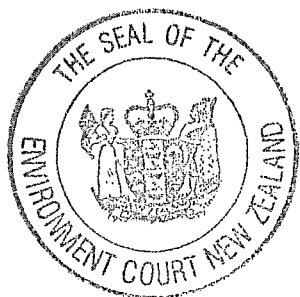
8. Therefore the Court orders by consent that the Proposed Bay of Plenty Policy Statement is amended as shown in underline (for additions) and ~~strike through~~ (for deletions) in **Attachment "A"** to this order.
9. The consent order disposes of the relief sought in:
- 9.1 Forest and Bird's appeal **ENV-2012-AKL-000078** paragraph 6.5.3 relating to Objective 29 and paragraphs 6.6.3 relating to amendment to the policy to refer to only Lake Rotorua;
 - 9.2 Federated Farmers' appeal **ENV-2012-AKL-000087** paragraph 5.iii relating to the focus of the Water Quality and Land Use chapter; paragraph 6.iii relating to regionally significant management issues; paragraph 7.iii relating to industry led initiatives and other matters; and paragraph 10.iii relating to Policy WL 5B and inclusion of Method 28;
 - 9.3 Horticulture NZ's appeal **ENV-2012-AKL-000088** paragraph 5.3 relating to Policy WL 7B; paragraph 6.3 relating to a definition of "land use" and amendments to Objective 29 and Policies WL 1B and 4B to refer to "activity change" and paragraph 8.3 to amend Section 2.10.1 to delete horticulture and add a paragraph relating to hydroelectricity and effects on water quality.
10. With the exception of matters listed in paragraph 10 above, the remaining parts of appeals **ENV-2012-AKL-000078, 87 and 88** remain extant.



11. There is no order as to costs in relation to this order.

DATED at AUCKLAND this 30th day of May 2013

J A Smith
Environment Judge



Water quality and land use

This section summarises the issues and objectives for managing the land and fresh water resources of the region, and therefore indirectly managing the region's freshwater and coastal receiving environments. The quality of surface and groundwater results directly from the way land is used in that water's catchment. Land use can also affect the qualities of soil and needs to be managed to protect the finite characteristics of soil on which life depends. Sustainable land management includes operating within the ecological limits of the environment. The resultant policies and methods seek to safeguard the quality of water, minimise soil loss, maintain soil health and ensure land use is integrated with receiving environments.

The water quality and land use section is an integration of three components:

- Land use and management
- Water quality
- Soil health and productivity.

Land use activities and land management affect the state of our lakes, rivers, streams and coastal waters. The degraded water quality of the lakes within the Rotorua district and the declining water quality of Tauranga Harbour (Te Awanui) are the most important issues for the region to address in the next 10 years. The planning framework under the Act allows for regional rules to address both discharges and land use. Discharges are required to be authorised whereas the use of land land use activities may be regulated for water-quality purposes.

~~Unsustainable Activities on land, land uses of land change and land use management practices can give rise to adverse effects on both land and water if they are not carefully managed.~~ The clearance of vegetation and soil disturbance can harm the mauri of the land and the plants and animals it supports. Contaminants ~~from~~ such as those from livestock, fertiliser run-off and sewage effluent discharges can affect the mauri of water and contact recreation may be unsafe when contaminants exceed set levels.

Industry-led initiatives are underway with the intention of reducing nutrient exports from land to water.

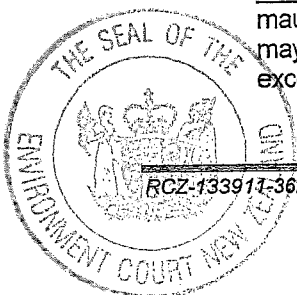
Erosion associated with storm events or the continued long-term release of sediments from land can result in degradation of lakes, streams, rivers and, ultimately, the sea. The significant increase in mangroves in the Tauranga and Ohiwa harbours, for example, is largely a result of sediment accumulation from land use changes.

A management framework for land and water in the Bay of Plenty needs to recognise the inter-relationship between land use activities that occur in catchments and the cumulative adverse effects that subsequently occur in waterways and then in the coastal marine area by:

- Setting clear objectives for the required future state of the region's water bodies and the land use activities within their catchments, including for the Rotorua Te Arawa Lakes; and
- Adopting a catchment-based management approach to sensitive catchments in the region.

Enhancement and restoration of degraded ecosystems, in terms of functions and service, and protection and maintenance of freshwater bodies are major components of the management approach. It emphasises managing land uses activities in a way to that will significantly aid the maintenance or enhancement of water quality—reduce sedimentation, soil loss, habitat loss and contamination, particularly in vulnerable freshwater bodies and in those that are identified as having significant ecological values. Integrated land use management means that all elements of the environment are included in land use decisions, whether such decisions are made by land owners or regional, city or district councils.

The Kaimai Mamaku Range is an example of an integrated catchment management approach being undertaken across the Bay of Plenty and Waikato regional boundaries to improve ecosystem health and address water quality, land management and pest management issues. It involves NZ Landcare Trust, the Department of



Conservation, iwi, community groups and landowners.

2.10.1 Water quality and land use

The regulatory regime for the management of water quality is established by the Act. Any discharge of a contaminant into water, or onto land from where it may enter water, must be expressly allowed by a national environmental standard, a regulation, a rule in a regional plan or a resource consent. A rule in a regional plan may not permit any such discharge that would result in specified adverse effects. In exceptional circumstances a resource consent may be granted for a discharge with such effects. A rule in a regional plan may control the use of land for the maintenance and enhancement of the quality of water in water bodies and coastal water.

The operative Bay of Plenty Regional Water and Land Plan establishes a framework for managing the region's land and water bodies. The plan applies water quality classifications to lakes, rivers and streams. Many water bodies are not meeting their classification standards, often due to faecal contamination.

The Statement directs regional and district plans, and informs the consideration of applications for resource consent on regionally significant water-quality and land use issues that require policy direction beyond that in operative plans. When cited by the relevant iwi, a statutory acknowledgement may be evidence of the iwi's association with an area that is the subject of a resource consent application.

Water quality is affected by discharges of contaminants that, either directly from point source discharges or indirectly through diffuse discharges on to or into land, result in the contaminants getting into surface or ground water.

Point source discharges are subject to conditions on discharge permits in accordance with relevant rules in regional plans and collectively no longer constitute a regionally significant issue, although some stormwater discharges pose an issue yet to be fully addressed.

Non-point source or diffuse discharges of nutrients from land into groundwater,

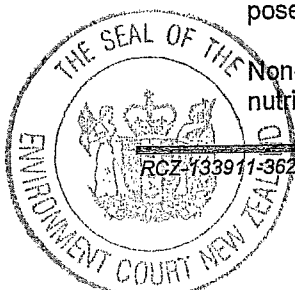
streams, rivers, lakes, estuaries, harbours and other coastal water, deriving from certain rural activities and land management practices, present a regionally significant issue. Some past and present present and future changes in farming practices such as higher stock numbers, more land being used for dairying, more intensive pastoral farming and horticulture, and increased fertiliser application, can are resulting in excessive concentrations of nutrients entering fresh and coastal waters. Ongoing changes in farming practices such as lower impact horticulture and more efficient dairying and pastoral farming that result in lower nutrient losses will help reduce concentrations of nutrients entering fresh and coastal waters.

Water quality is affected by the amount of contaminants discharged and the quantity of water in the receiving water body. The process for setting freshwater limits should have regard to the cumulative impacts of all activities, and any effect on life-supporting capacity or physiochemical parameters. For particular water levels and flows, each water body is able to assimilate only a certain amount of nutrients or other contaminants before its values are unacceptably compromised. Levels of contaminants and water quantity are to be managed together to achieve water quality and allow for the taking and use of water.

Excessive contaminant discharges can result in adverse effects occurring that are specified in the Act as being unacceptable. Catchments with water bodies where these effects occur or are likely are referred to as 'catchments at risk'.

In catchments at risk, the Statement sets overall target levels to which specific contaminants are to be reduced, including nitrogen into Lake Rotorua in particular, but does not dictate how the reduction is to be achieved. The Regional Water and Land Plan is to require managed reduction of discharges until each at-risk catchment's target level is met.

In catchments at risk, land use change that threatens water quality is to be allowed only if resource consent is obtained. In all catchments, expected



benefits of land use change for water quality are to be regarded as positive effects in the consideration of proposals for such change. District and regional plans should ease the process of changing to land uses or activities that better support the achievement of water quality objectives. For example, where nutrients degrade water quality, district plans will assist changes to land use activities with reduced nutrient losses.

In catchments at risk, the capacity of a water body to assimilate a contaminant is to be allocated among land use activities. The allocation should result in an equitable outcome and allow for the balancing of public and private costs and benefits.

Parliament, through the Te Arawa Lakes Settlement Act 2006, has recognised that development around the edges of the lakes has resulted in an increased nutrient load flowing into the lakes. Excess nitrogen and phosphorus has led to the growth of blue-green algae in the lakes. This environmental degradation has affected the mana and wairua of the lakes for Te Arawa iwi.

The Te Arawa Lakes Settlement Act 2006 established the Rotorua Te Arawa Lakes Strategy Group. The group comprises Te Arawa Lakes Trust, Rotorua District Council and Bay of Plenty Regional Council. The purpose of the Group is to contribute to the promotion of the sustainable management of the Rotorua Te Arawa Lakes and their catchments, for the use and enjoyment of present and future generations, while recognising and providing for the traditional relationship of Te Arawa with their ancestral lakes.

Alongside the regulatory regime established in regional plans, voluntary initiatives and other interventions may directly reduce the levels of contaminants discharged. This Statement does not require that these initiatives and interventions be undertaken but provides the target towards which they should be directed. Such initiatives and interventions may, however, require authorisation under the Act by resource consent or a rule in a plan.

Much of the wealth of the region derives from its primary production which, in turn, is dependent on the productive capacity of the region's soils. Sustaining the potential of soil to meet the reasonably foreseeable needs of future generations and safeguarding its life-supporting capacity are essential to enabling people and communities to provide for their well-being. The two main pressures on the region's soils relate to soil loss and soil health.

Volcanic ash soils, covering most of the region's productive land, are prone to surface erosion where there is little vegetation cover. Research in the Tauranga Harbour catchment has shown that highest losses occur for pasture areas, steep slopes and soils that are less well-drained. Stream bank erosion also contributes to soil loss, particularly where stream margins are managed inappropriately or not retired from grazing. Land management practices as well as maintenance of the quality of indigenous vegetation through active pest management can address these causes.

The main threats to soil health are the use of heavy machinery and intensive livestock grazing. Protection of the health and intactness of vulnerable or high-quality soils includes maintaining the physical, chemical and biological properties that enable soils to retain their ecosystem function and range of uses.

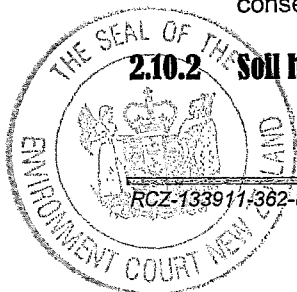
2.10.3 Regionally significant water quality and land use issues

1 Decline in water quality from land use

Some land use and land management practices lead to erosion and soil loss resulting in water quality degradation and accelerated accumulation of sediment in Tauranga Harbour, Ohiwa Harbour and other receiving environments.

Water quality is declining and the mauri of water has been degraded in parts of the region. Currently, the decline is being caused primarily by non-point source

2.10.2 Soil health and productivity



discharges from agricultural and urban land use activities.

2 Effects of nutrient discharges on Rotorua Te Arawa Lakes

Agricultural discharges of nitrogen and phosphorus are a significant contributor to reducing water quality in the majority of the lakes of the Rotorua district.

3 Soil health and productivity is being reduced by unsustainable land management activities

Land management practices and uses that are incompatible with the capability of a soil to sustain them are reducing that soil's health and life-supporting capacity.

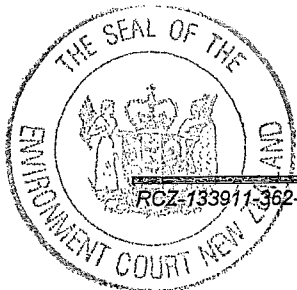
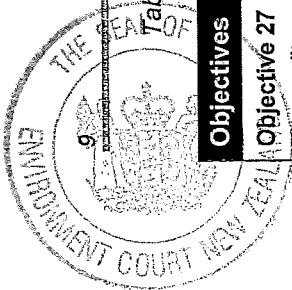
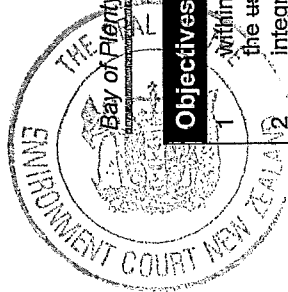


Table 10 Water quality and land use objectives and titles of policies and methods to achieve the objectives.

Objectives	Policy titles	Page	Method titles	Implementation	Page
Objective 27 The quality and mauri of water in the region is maintained or, where necessary to meet the identified values associated with its required use and protection, enhanced	Policy WL 1B: Enabling land use change	Error! Bookmark not defined.	Method 3: Resource consents, notices of requirement and when changing varying or reviewing plans	Regional council, city and district councils	Error! Bookmark not defined.
	Policy WL 2B: Defining catchments at risk	Error! Bookmark not defined.	Method 2: Regional plan implementation	Regional council	Error! Bookmark not defined.
Objective 28 Enhance the water quality in the lakes of the Rotorua district and other catchments at risk	Policy WL 3B: Establishing limits for contaminants entering catchments at risk	Error! Bookmark not defined.	Method 2: Regional plan implementation	Regional council	Error! Bookmark not defined.
	Policy WL 4B: Requiring consent for increased discharges in catchments at risk	Error! Bookmark not defined.	Method 2: Regional plan implementation	Regional council	Error! Bookmark not defined.
	Policy WL 5B: Allocating the capacity to assimilate contaminants	11	Method 2: Regional plan implementation	Regional council	Error! Bookmark not defined.
	Policy WL 6B: Managing the reduction of nutrient losses	Error! Bookmark not defined.	Method 2: Regional plan implementation	Regional council	Error! Bookmark not defined.
Objective 29 Land use activities are:			Method 3: Resource consents, notices of requirement and when changing varying or reviewing plans	Regional council, city and district councils	Error! Bookmark not defined.
			Method 28: Undertake consultation to identify water quality standards and targets for the Rotorua Te Arawa Lakes	Regional council	Error! Bookmark not defined.
	Policy WL 7A/B: Minimising the effects of land and soil	Error! Bookmark not defined.	Method 3: Resource consents, notices of requirement and when changing varying or reviewing plans	Regional council, city and district councils	Error! Bookmark not defined.





Objectives	Policy titles	Page	Method titles	Implementation	Page
1. Within the capability of the land to support the use-activity; integrated with the wider environmental values of its- <u>their</u> surroundings; and	disturbance		Method 36: Provide protocols for managing land and soil disturbance	Regional council, city and district councils	Error! Bookmark not defined.
2. within the capacity of its receiving waters to assimilate any discharge.	Policy WL 8B: Providing for regular reviews of regional council consent conditions	Error! Bookmark not defined.	Method 3: Resource consents, notices of requirement and when changing varying or reviewing plans	Regional council, city and district councils	Error! Bookmark not defined.

Water Quality Policies

Policy WL 5B: Allocating the capacity to assimilate contaminants

Allocate among land use activities the capacity of Rotorua Te Arawa lakes and other water bodies in catchments at risk to assimilate contaminants within the limits established in accordance with Policy WL 3B having regard to the following principles and considerations:

- (a) Equity/Fairness, including intergenerational equity;
- (b) Extent of the immediate impact;
- (c) Public and private benefits and costs;
- (d) Future vision for landscape;
- (e) Iwi land ownership and its status including any Crown obligation;
- (f) Cultural values;
- (g) Resource use efficiency;
- (h) Existing land use;
- (ha) Existing on farm capital investment; and
- (hb) Ease of transfer of the allocation.

Explanation

Each water body is able to assimilate a certain amount of nutrients or other contaminants before the values of the water body are unacceptably compromised.

Essentially, what is being allocated is the capacity of Lake Rotorua and other at-risk catchments to assimilate a discharge of a contaminant. A 2005 amendment to the Act introduced as a new function of regional councils the establishment of regional rules to allow the allocation of this resource on other than a first-come/first-served basis. Thus, allocation mechanisms are implemented through rules in regional plans. This policy seeks to direct this by requiring, and providing principles and considerations for, allocation.

The management of activities and land uses within the context of the catchment of a receiving water body allows the particular characteristics of each water body to be taken into account. In the context of Lake Rotorua, for example, the amount of nitrogen that the lake can assimilate without

adverse effect comes from the whole of the catchment. How that amount is to be distributed within the catchment presents management issues requiring policy guidance. Consequently, allocation decisions will be undertaken in consultation with the affected community, particularly landowners directly affected by the allocation.

Table reference: **Objective 28, 2, 10, 17, 27, Method 2, 28**

Policy WL 7BA: Minimising the effects of land and soil disturbance

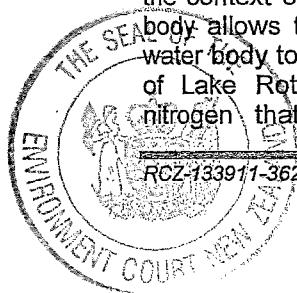
~~Collaborate in developing and implementing plan provisions and the consideration of resource consent applications to~~ Achieve regional consistency by controlling land and soil disturbance activities to:

- (a) Avoid accelerated erosion and soil loss; and
- (b) Minimise silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained.

Explanation

An area of overlapping jurisdiction between the Bay of Plenty Regional Council and district and city councils is the ability to control land and soil disturbance activities. Many small scale earthworks – such as driveways and retaining walls – can cumulatively contribute large amounts of silt to stormwater and water bodies, as do large scale earthworks on erosion prone land. Some activities – such as major road construction – are likely to require resource consents from both the Bay of Plenty Regional Council and district or city councils. Local authorities should work in collaboration to manage the effects of land and soil disturbance activities. This policy provides for the consideration of land and soil disturbance activities to minimise erosion and sediment runoff prior to plan controls being adopted by regional and district plans.

This policy will require that the Bay of Plenty Regional Council and district and city councils integrate the control of land and soil disturbance activities in their regional and district plans. Method 36 requires the Bay of Plenty Regional Council and district and city councils to develop a protocol for land and soil disturbance. The protocol will assist with implementing this policy. Protocol decisions will be undertaken in consultation with affected stakeholders.



Some activities — such as major road construction — are likely to require resource consents from both the Bay of Plenty Regional Council and district or city councils. Local authorities should work in collaboration to manage the effects of land and soil disturbance activities.

For the purpose of this policy, land and soil disturbance is intended to encompass matters included in the following definitions of the Regional Water and Land Plan; Land and Soil Disturbance, Earthworks, Vegetation Clearance and Cultivation.

Table reference: **Objectives 29, 2, 10, 11, 12, 14 and 17, Methods 3 and 36**

