

BEFORE BAY OF PLENTY REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Lake Rotorua Nutrient Management - Proposed Plan Change 10 to the Bay of Plenty Regional Water and Land Plan under clause 8B of Schedule 1 to the Act

BETWEEN **ROTORUA LAKES COUNCIL**

Submitter

AND **BAY OF PLENTY REGIONAL COUNCIL**

Plan Change 10 Proponent

LEGAL SUBMISSIONS OF COUNSEL FOR ROTORUA LAKES COUNCIL

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INTRODUCTION

1. Rotorua Lakes Council (RLC) supports the use of a rules-based approach by Bay of Plenty Regional Council (BOPRC) to reduce nitrogen levels in Lake Rotorua to a sustainable nitrogen load of 435 t/N/yr by 2032.
2. RLC's submission on Proposed Plan Change 10 (PC10) to the Operative Bay of Plenty Regional Water and Land Plan (RWLP), in essence, questions whether an incomplete assessment of the benefits and costs of economic effects can support the proposition that a grandparenting approach (with sector activity average ranges) to nitrogen allocation is the most appropriate way to achieve BOPRC's objectives to enhance water quality in Lake Rotorua.¹

EVIDENCE TO BE CALLED

3. RLC is calling evidence from four expert witnesses to explain in detail its submission on PC10:
 - (a) Mr Philip Osborne – economic effects;
 - (b) Mr Simon Banks – wastewater infrastructure;
 - (c) Mr James Fuller – planning; and
 - (d) Mr Grant Eccles – planning.
4. In response to the Hearing Panel's Memorandum No.5 – Caucusing of Expert Witnesses / Hearing Schedule, RLC confirms that the four expert witnesses it is calling are available to caucus if directed by the Hearing Panel to do so.
5. The evidence of Mr Eccles concludes with RLC's recommended further amendments to PC10. It is possible that further discussion between the RLC and BOPRC, or caucusing of expert witnesses, may initiate additional amendments or refinement of RLC's proposed amendments to PC10. We will advise the Hearing Panel accordingly.

¹ Objective 28 of the Operative Bay of Plenty Regional Policy Statement (RPS) and Objective 11 of the RWLP.

EXECUTIVE SUMMARY

Provision for urban growth

6. RLC's wastewater treatment plant (WWTP) is essential infrastructure required to service the current and future urban population of Rotorua.
7. Compared to alternative on-site treatment, reticulation and centralised treatment of wastewater through the WWTP reduces nutrient inputs into Lake Rotorua, benefiting the health and well-being of the community and enhancing Lake water quality. Accordingly, RLC supports the inclusion of new Policies LRP P16 and LRP P17 recommended in the Section 42A Report, but also recommends the addition of new Policy LRP 18 in PC10 to recognise this point.
8. RLC submits that the inclusion of a new Policy LRP 18 in PC10 will, in turn, allow both BOPRC and RLC to carry out their respective and complementary statutory duties and functions to integrate land use and infrastructure in the Rotorua district.

Provision for future development of Maori freehold land

9. Maori freehold land constitutes approximately 25% of the land within PC10's Lake Rotorua catchment. Expert evidence to be called by RLC raises significant concerns about the ability of owners of Maori freehold land to realise their future development aspirations in light of the provisions of PC10 as currently proposed.
10. The PC 10 amendments recommended in Appendix 2 of Mr Eccles' statement of evidence go some way to addressing this area of concern for RLC. The completion of the economic assessment, as recommended by Mr Osborne, in order to then reliably identify the appropriate approach to nitrogen allocation in the Lake catchment will also address this concern.

Approach to nitrogen allocation

11. RLC respectfully submits that completion of the assessment of the actual and potential economic effects resulting from PC10, and its approach to nitrogen allocation in particular, are necessary considerations for the Hearing Panel under section 32 of the RMA.

12. Mr Osborne raises doubt in his statement of evidence as to whether the provisions of PC10, and in particular the rules imposing a grandparenting approach to nitrogen allocation, are the most appropriate way to achieve BOPRC's objectives for Lake Rotorua. RLC submits that Mr Osborne's expert opinion constitutes reasonably cogent evidence that should prompt further economic assessment in the section 32 evaluation for PC10 in order to identify whether the grandparenting approach (currently proposed in PC10) or the alternative natural capital approach is the most appropriate way to achieve the RPS and RWLP objectives for Lake Rotorua.

PROVISION FOR URBAN GROWTH

13. RLC performs statutory duties and functions under both the Resource Management Act 1991 (RMA) and Local Government Act 2002 (LGA02) to provide for urban growth in the Rotorua district and the 'development infrastructure' (to borrow a phrase from the NPS on Urban Development Capacity 2016 (NPS UDC)) that must be integrated with that urban growth. 'Development infrastructure' is defined in the Interpretation section of the NPS UDC to mean:

... network infrastructure for water supply, wastewater, stormwater, and land transport as defined in the Land Transport Management Act 2003, to the extent that it is controlled by local authorities.

14. Both BOPRC and RLC carry out complementary statutory duties and functions to integrate land use and development infrastructure in the Rotorua district:

BOPRC duties and functions

- (a) The strategic integration of infrastructure with land use;²
- (b) Meet the current and future needs of communities for good quality infrastructure;³
- (c) Give effect to the NPS UDC in its RPS and RWLP;⁴

² Section 30(1)(gb) of the RMA.

³ Section 10(1)(b) of the LGA02.

⁴ Sections 55, 62(3) and 67(3)(a) of the RMA.

- (d) Achieve integrated management of Lake Rotorua, and land and infrastructure within the Lake catchment (as relevant examples of natural and physical resources) through its RPS;⁵ and
- (e) Use the RWLP to assist it to carry out its statutory functions.⁶

RLC duties and functions

- (a) Integrated management of effects associated with the use and development of land and associated physical resources such as development infrastructure;⁷
 - (b) Control subdivision of land in the Rotorua district;⁸
 - (c) Meet the current and future needs of communities for good quality infrastructure;⁹
 - (d) Give effect to the NPS UDC in its Operative District Plan (ODP);¹⁰
 - (e) Give effect to the RPS¹¹ and have regard to the RWLP¹² in its ODP; and
 - (f) Use the ODP to assist it to carry out its statutory functions.¹³
15. The evidence of Mr Banks illustrates the importance of the role that PC10 plays in making appropriate provision for RLC's WWTP as essential development infrastructure for the current and future urban population in Rotorua. While the Rotorua district does not, on the basis of current resident and visitor population statistics, fall within the NPS UDC's definition of a "high-growth urban area",¹⁴ it is

⁵ Section 59 of the RMA.

⁶ Section 63(1) of the RMA.

⁷ Section 31(1)(a) of the RMA.

⁸ Section 31(2) of the RMA.

⁹ Supra at Footnote 3.

¹⁰ Sections 55 and 75(3)(a) of the RMA.

¹¹ Section 75(3)(c) of the RMA.

¹² Sections 74(2) and 75(4)(b) of the RMA.

¹³ Section 72 of the RMA.

¹⁴ See the Interpretation section of the NPS UDC.

nevertheless an “urban environment”¹⁵ for which BOPRC and RLC are required, as the relevant “local authorities” for the Rotorua district,¹⁶ to:

- (a) Integrate land use, development, development infrastructure and other infrastructure”;¹⁷ and
- (b) Satisfy themselves that other infrastructure required to support urban development is likely to be available.¹⁸

16. RLC acknowledges that it is expected, pursuant to the local authority principles in the LGA02, to actively seek to collaborate and co-operate with BOPRC to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes relating to population growth.¹⁹ RLC has approached its participation in PC10 on this basis.
17. Mr Banks concludes that PC10 implies a fixed mass limit of 30t/N/yr on RLC’s WWTP. The WWTP is essential infrastructure for Rotorua’s urban population and, as Mr Banks notes, is unlikely to achieve PC10’s implied limit as the population grows (even after the incorporation of technology and design which represent the best practicable option).²⁰ This prediction raises significant concerns for RLC in terms of its ability to carry out the statutory duties and functions outlined above.
18. Mr Osborne also observes the fundamental role that the WWTP plays in Rotorua’s economic growth and the community’s economic wellbeing through population growth. An implied fixed mass limit on the WWTP as a result of PC10 could result in adverse economic effects but, as Mr Osborne notes, there is currently no economic assessment of this potential risk.²¹
19. RLC respectfully submits, therefore, that the amendments to PC10 recommended by Mr Banks and Mr Osborne to recognise the role that the WWTP plays in providing

¹⁵ As defined in the NPS UDC.

¹⁶ As defined in the NPS UDC.

¹⁷ Objective OD1 of the NPS UDC.

¹⁸ Policy PA2 of the NPS UDC.

¹⁹ Section 14(1)(e) of the LGA02.

²⁰ SD Banks, evidence-in-chief, para 33 to 38.

²¹ PM Osborne, evidence-in-chief, para 50 to 57.

for urban growth and the community's economic wellbeing, as recorded in Appendix 2 of the evidence of Mr Eccles, are adopted in the final decision made by the Hearing Panel on PC10.

20. Mr Eccles observes that new Policies LR P16 and LR P17, as recommended in the Section 42A Report, go some way to addressing RLC's concerns but do not expressly acknowledge the environmental benefits that the WWTP provides through the reticulation of existing urban communities and the future opportunity to reticulate rural areas and lakeside communities such as Lake Tarawera.²² Compared to alternative on-site treatment, reticulation and centralised treatment of wastewater through the WWTP reduces nutrient inputs into Lake Rotorua benefiting the health and well-being of the community and enhancing the Lake's water quality. Mr Eccles therefore recommends a small group of important amendments to PC10, including a new Policy LR P18, to clearly articulate this point. This additional policy provides appropriate recognition of the significant role this core infrastructure plays in delivering community wellbeing.
21. It is respectfully submitted that RLC's proposed amendments to PC10 will allow RLC, as well as BOPRC, to carry out their respective statutory duties and functions relating to the integration of land use and development infrastructure for Rotorua's current and future urban population.²³

PROVISION FOR FUTURE DEVELOPMENT OF MAORI FREEHOLD LAND

22. RLC, as already noted above, carries out statutory duties and functions to integrate land use, development and infrastructure for the entire Rotorua community, including Tāngata Whenua. The significance of Te Arawa as Tāngata Whenua of the Rotorua district has been recognised, most recently, in the Manatu Whakaaetanga Partnership Agreement (PA) entered into by Te Arawa and RLC on 18 December 2015. The background to the establishment of the PA illustrates the importance of the partnership between Te Arawa and RLC:

2.3 Te Hanga o Te Waka Hourua (Establishment of the Partnership)

²² GR Eccles, evidence in chief, para 26 to 32.

²³ PM Osborne, evidence-in-chief, para 7 and 8.

Te Arawa iwi and hapu are Tāngata Whenua of Rotorua district having been the first inhabitants of the lands here several hundred years ago. As such Te Arawa have a deep connection and commitment to the environment, economy, people and communities of the district. To this end Te Arawa have been consistent in their desire, as maanawhenua, to be more involved in the planning and decision making of Rotorua Lakes Council and believe a stronger partnership could achieve this.

Council has statutory and legal obligations to improve communication, consultation and its relationship with Tāngata Whenua and Māori, to recognise the Treaty of Waitangi and to facilitate participation by Māori in council decision-making processes...

23. Mr Osborne’s evidence notes the absence of any economic assessment of the appropriateness of the PC10 provisions to achieve the RPS and RWLP objectives in the context of underdeveloped land, and underdeveloped Māori freehold land in particular.²⁴ Noting that Māori freehold land constitutes 25% of the land within PC10’s Lake Rotorua catchment,²⁵ Mr Osborne suggests that the completion of a comprehensive economic assessment for PC10 represents an opportunity to rectify some of the inequity imposed on the owners of underdeveloped land by the imposition, through Rule 11 of the RWLP, of a nitrogen discharge baseline set in the 2001 to 2004 period.
24. Mr Eccles also notes that PC10’s approach to nitrogen management places restrictions on land only recently returned to iwi through settlements negotiated with the Crown under the Treaty of Waitangi Act 1975. RLC observes that the development aspirations of iwi do not appear to have been adequately represented or taken into account in stakeholder consultation to date.²⁶
25. RLC’s obligations to Te Arawa under the PA reinforce the statutory duties and functions it carries out under the RMA and LGA to enable the people and community of Rotorua to provide for their social, economic and cultural wellbeing. The PC10 amendments recommended in Appendix 2 of the evidence of Mr Eccles do, in part, reflect RLC’s obligations under the PA. However, there may be further amendments that are presented during the hearing by other submitters that RLC may wish to support in light of its commitments under the PA. Again, we will advise the Hearing Panel accordingly if this does occur.

²⁴ PM Osborne, evidence-in-chief, para 43 to 46.

²⁵ PM Osborne, evidence-in-chief, para 43.

²⁶ GR Eccles, evidence-in-chief, para 17.

APPROACH TO NITROGEN ALLOCATION

26. RLC acknowledges the requirements of the RMA that apply to the Hearing Panel's consideration of PC10. These requirements, as far as they are relevant to PC10, are summarised in **Appendix 1** of these Legal Submissions. Appendix 1 is, in essence, an update of lists developed by the Environment Court through the *Long Bay* line of cases.²⁷
27. PC10 is subject to the evaluation and assessment requirements imposed by section 32 of the RMA. In particular, section 32(2)(a)(i) of the Act requires an assessment of the benefits and costs of economic effects, amongst other effects, anticipated from the implementation of PC10's provisions as a component of the overall evaluation of whether those provisions are the most appropriate to achieve BOPRC's objectives. Section 32 of the RMA is recorded in **Appendix 2** of these Legal Submissions. This constraint logically aligns with the direction to BOPRC under section 68(3) of the RMA that it must have regard to the actual or potential effect on the environment of activities, particularly any adverse effect, when making rules.
28. Mr Osborne concludes in his evidence that PC10's grandparenting approach to nitrogen allocation does not enable Rotorua's people and community to provide for their social and economic wellbeing.²⁸ Mr Osborne reaches this conclusion on the basis of the absence of adequate assessment, in his opinion, of the level of potential economic costs associated with PC10's approach to nitrogen allocation, and in particular the potential for retention of economically inefficient land uses to occur as a result of the grandparenting approach.²⁹
29. The grandparenting approach to nitrogen allocation is based on historical farm activity and consequent nitrogen discharges. In the case of PC10, the grandparenting approach utilises a 2001-2004 benchmarking period of land use activity and nitrogen levels in order to set nitrogen allocation rights. In comparison, the natural capital approach utilises the biophysical potential of the natural capital of the soil. It sets allocation rights taking into account a potential animal stocking rate that can be

²⁷ *Long Bay – Okura Great Park Society Incorporated v North Shore City Council* A78/08, *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

²⁸ PM Osborne, evidence-in-chief, para 43 to 46.

²⁹ PM Osborne, evidence-in-chief, para 34 and 35.

sustained by a legume-based pasture fixing nitrogen biologically, under optimum management and before the introduction of additional technologies.

30. Mr Osborne notes in his evidence³⁰ that a key benefit of the grandparenting approach is its recognition of current investment in rural activities. The result of the approach is a more likely retention of current land use activities and a lower transition cost for those activities due to the value of their nitrogen rights. However the benefits of the natural capital approach, in Mr Osborne’s opinion, include rewarding land use activities that have low nitrogen discharges and high productivity values, rectifying historical inefficiencies and promoting more sustainable management of the land resource in the long term.
31. Assessment of the actual and potential economic effects resulting from PC10, and its approach to nitrogen allocation in particular, are critical considerations under section 32 of the RMA as the Court has previously noted in plan change processes such as Variation 6 to the then Proposed Waikato Regional Plan:

[177] There has been considerable debate about the extent of the relevance of economic evidence under the Act. Economic evidence can cover a wide spectrum. It can address macro and micro economic considerations. It can address international, national, regional and local economic considerations. It can provide an in-depth cost/benefit analysis as to the use of alternative sites or methods, or as to doing or not doing something. These examples are by no means exhaustive.

[178] Clearly, the Act is concerned with economic effects. The term “*environment*” is defined in Section 2 of the Act as including:

environment includes-

(a) ecosystems and their constituent parts, including people and communities; and

(b) all natural and physical resources; and

(c) amenity values; and

(d) the social, *economic*, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters

[highlighting in italics added]

[179] It follows from this definition that the social, economic, aesthetic, and cultural conditions which affect people and communities are relevant for

³⁰ PM Osborne, evidence-in-chief, para 30 to 48.

the purposes of Section 5(2)(c) and Section 104(1)(a) of the Act. In addition, Section 5(2) of the Act refers to the management of:

(2) ...resources in a way... which enables people and communities to provide for their social, *economic*, and cultural well-being and for their health and safety...

while meeting the three constraints set out in (a), (b) and (c).

[180] Economic considerations are also relevant to some of the statutory directions set out in the Act and, with respect to policy statements and plans, in the First Schedule. For example, the efficient use of natural and physical resources has an economic component. **Economic efficiency may in appropriate cases be a factor in Sections 29, 32, and 108 of the Act.**

[181] Thus, there can be no doubt that the Act includes economic considerations. But the manner in which such considerations are to be taken into account are sometimes complex and depends on the nature of each individual case. **Economics is just one of the various threads discernible in the Act which contributes to the attainment of a sustainable management.**³¹

[Our emphasis added.]

32. Mr Osborne’s economic evidence raises doubt as to whether the provisions of PC10, and in particular the rules imposing a grandparenting approach to nitrogen allocation, are the most appropriate way to achieve the objectives of the RPS and RWLP given the evaluation undertaken by BOPRC has not adequately identified and assessed the benefits and costs of the anticipated economic effects under section 32(2)(a) of the RMA. Caselaw, albeit applying section 32 as it was before the commencement of the Resource Management Amendment Act 2013, has confirmed that “most appropriate” requires a comparison of options and, if supported by cogent evidence, should prompt further comparison of possible options:

[63] ... The phrase “most appropriate” introduces (implicitly) comparison with other reasonably possible policies or methods...

[64] ... ‘most appropriate’ in section 32 suggests a choice between at least two options (or, grammatically, three). In other words, **comparison with something does appear to be mandatory.** The rational choices appear to be the current activity on the land and/or whatever the district plan permits. So we respectfully agree with Dobson J when he stated that consideration of yet other means is not compulsory under the RMA. We would qualify this by suggesting that **if the other means were raised by reasonably cogent evidence, fairness suggests the council or, on appeal, the court should look at the further possibilities.**³²

³¹ *Carter Holt Harvey Limited v Waikato Regional Council* [2011] NZEnvC 380.

³² *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

[Our emphasis added.]

33. RLC respectfully submits that Mr Osborne presents ‘reasonably cogent evidence’ raising doubt that PC10’s nitrogen allocation approach is the most appropriate way to achieve the RPS and RWLP objectives, particularly having regard to what Mr Osborne describes as a lack of comprehensive economic cost and benefit analysis. This identified shortcoming in the section 32 evaluation should, in RLC’s submission, support a consideration of further options, such as the natural capital approach, by the Hearing Panel. RLC acknowledges that such further consideration by the Hearing Panel may require further economic assessment to be undertaken in order to address the inadequacies in the current economic assessment identified by Mr Osborne. As noted at the outset of these Legal Submissions, the expert witnesses to be called by RLC are available to caucus in order to assist on this matter if so directed.

CONCLUSIONS

34. RLC performs statutory duties and functions under the RMA and LGA02 to provide for urban growth in the Rotorua district and the infrastructure that must service and integrate with that urban growth. Appendix 2 of Mr Eccles’ evidence records recommended further amendments to PC10 that RLC considers are necessary in order to assist it to carry out its statutory duties and functions and, in particular, to promote sustainable management of both natural and physical resources in the Lake Rotorua catchment.

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6 March 2017

APPENDIX 1

A. GENERAL REQUIREMENTS

1. A regional plan change should be designed to accord with - and assist the regional council to carry out - its functions so as to achieve the purpose of the Act.³³
2. The regional plan change must also be prepared in accordance with any regulation and any direction given by the Minister for the Environment.³⁴
3. When preparing the regional plan change the regional council must give effect to any national policy statement.³⁵
4. When preparing its regional plan change the regional council must give effect to any operative regional policy statement.³⁶
5. When preparing its regional plan change the regional council shall have regard to any proposed regional policy statement.³⁷
6. A regional plan change must not be inconsistent with any water conservation order or any other regional plan for the region.³⁸
7. When preparing a regional plan change the regional council shall also have regard to any:
 - (a) Management plans and strategies prepared under other Acts;
 - (b) Relevant entries on the New Zealand Heritage List / Rārangī Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014;
 - (c) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations

³³ Section 63(1) of the RMA.

³⁴ Section 65(1A) of the RMA.

³⁵ Section 67(3)(a) of the RMA.

³⁶ Section 67(3)(c) of the RMA.

³⁷ Section 66(2)(a) of the RMA.

³⁸ Section 67(4) of the RMA.

or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing;

to the extent that their content has appearing on resource management issues of the region;

(d) The extent to which the regional plan needs to be consistent with the regional policy statements and plans, or proposed regional policy statements and proposed plans, of adjacent regional councils.³⁹

8. When preparing a regional plan change the regional council must deal with any relevant planning document recognised by an iwi authority, if they are lodged with the council, in the manner specified and to the extent that their content has a bearing on the resource management issues of the region.⁴⁰

9. When preparing a regional plan change the regional council must not have regard to trade competition or the effects of trade competition.⁴¹

10. A regional plan must state the objectives for the region, policies to implement those objectives and the rules to implement the policies.⁴²

B. OBJECTIVES [THE SECTION 32 TEST FOR OBJECTIVES]

11. The proposed objectives, if any, in a regional plan change are to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.⁴³ (It is noted that PC10 does not propose to introduce any new objectives to the RWLP).

C. POLICIES AND METHODS (INCLUDING RULES) [THE SECTION 32 TEST FOR POLICIES AND RULES]

12. Policies are to implement the objectives, and the rules are to implement the policies.⁴⁴

³⁹ Section 66(2) of the RMA.

⁴⁰ Section 66(2A)(a) of the RMA.

⁴¹ Section 66(3) of the RMA.

⁴² Section 67(1) of the RMA.

⁴³ Section 32(1)(a) of the RMA.

⁴⁴ Section 67(1) of the RMA.

13. The policies, rules and other methods (collectively now referred to as the ‘provisions’ in section 32(6)) that implement, or give effect to the relevant objectives, are to be examined as to whether they are the most appropriate way to achieve the objectives. The examination is to be undertaken by:
- (a) Identifying other reasonably practicable options for achieving the objectives;⁴⁵ and
 - (b) Assessing the efficiency and effectiveness of the provisions in achieving the objectives,⁴⁶ which in turn, requires:
 - (i) Identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects anticipated from the implementation of the provisions,⁴⁷ including the opportunities for –
 - economic growth that is anticipated to be provided or reduced;⁴⁸
 - employment that is anticipated to be provided or reduced;⁴⁹
 - (ii) if practicable, quantifying these benefits and costs;⁵⁰
 - (iii) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;⁵¹
 - (c) summarising the reasons for deciding on the provisions;⁵² and

⁴⁵ Section 32(1)(b)(i) of the RMA.

⁴⁶ Section 32(1)(b)(ii) of the RMA.

⁴⁷ Section 32(2)(a) of the RMA.

⁴⁸ Section 32(2)(a)(i) of the RMA.

⁴⁹ Section 32(2)(a)(ii) of the RMA.

⁵⁰ Section 32(2)(b) of the RMA.

⁵¹ Section 32(2)(c) of the RMA.

⁵² Section 32(1)(b)(iii) of the RMA.

- (d) Containing a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed regional plan change;⁵³ and
- (e) If a national environmental standard applied and a proposed rule imposes a greater prohibition or restriction on an activity than that standard, then the evaluation must examine whether the prohibition or restriction is justified.⁵⁴

D. RULES

- 14. In making a rule the regional council shall have regard to the actual or potential effect on the environment of activities, including any adverse effect.⁵⁵
- 15. Rules have the force and effect of regulations.⁵⁶
- 16. A regional plan rule may:
 - (a) Apply throughout the region or part of the region;
 - (b) Make different provision for parts of the region or different classes of effects;
 - (c) Apply all the time or for stated periods or seasons;
 - (d) Be specific or general in application; and
 - (e) Require a resource consent to be obtained for an activity causing or likely to cause an adverse effect not otherwise covered by a regional plan.⁵⁷
- 17. A regional plan rule relating to minimum standards of water quality may state:

⁵³ Section 32(1)(c) of the RMA.

⁵⁴ Section 32(4) of the RMA.

⁵⁵ Section 68(3) of the RMA.

⁵⁶ Section 68(2) of the RMA.

⁵⁷ Section 68(5) of the RMA.

- (a) Whether the rule affects the exercise of existing resource consents for activities which contravene the rule; and
- (b) That resource consent holders may comply with the requirements of the rule in stages or over specified periods.⁵⁸

⁵⁸ Section 68(7) of the RMA.

APPENDIX 2

32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the **provisions** in the proposal **are the most appropriate way to achieve the objectives** by—
 - (i) **identifying other reasonably practicable options for achieving the objectives**; and
 - (ii) **assessing the efficiency and effectiveness of the provisions in achieving the objectives**; and
 - (iii) **summarising** the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An **assessment under subsection (1)(b)(ii) must—**
 - (a) **identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—**
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—
 - (a) the provisions and objectives of the amending proposal; and

- (b) the objectives of the existing proposal to the extent that those objectives—
 - (i) are relevant to the objectives of the amending proposal; and
 - (ii) would remain if the amending proposal were to take effect.

- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
 - (a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
 - (b) at the same time as the proposal is publicly notified.

- (6) In this section,—
objectives means,—
 - (a) for a proposal that contains or states objectives, those objectives:
 - (b) for all other proposals, the purpose of the proposal**proposal** means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act
provisions means,—
 - (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:
 - (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

[Our emphasis added.]