

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

AND

IN THE MATTER OF

Negotiations on section 42A report
recommendations

**MEMORANDUM TO THE CHAIR OF THE HEARING PANEL
FROM COUNSEL FOR THE BAY OF PLENTY REGIONAL COUNCIL
DATED 6 APRIL 2017
CONCERNING CORRESPONDENCE DATED 3 APRIL
FROM NGATI UENUKUKOPAKO IWI TRUST.**

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MAY IT PLEASE THE HEARING COMMISSIONERS

Introduction

1. We refer to the letter dated 3 April 2017 (received via the hearings manager/website 5 April) from the further submitter: **NGATI UENUKUKOPAKO IWI TRUST**. That letter seeks a reply from the Bay of Plenty Regional Council about procedural matters. It is attached as **Appendix A** to this memorandum.
2. We understand that NGATI UENUKUKOPAKO IWI TRUST consider that the report filed by Counsel on the caucusing meeting between the experts and planners for the Bay of Plenty Regional Council and Rotorua Lakes Council, and subsequent recommended amendment to the s42A report wording, signal an agreement to increase nitrogen discharges into Lake Rotorua, and undermines the integrity of their upcoming presentation in opposition to the RLC relief. For the reasons explained below, this is not the case.
3. The recommended changes are based solely on the principle of there being no net increases in nitrogen to the Lake as a result of urban growth into rural land or reticulation of other communities. This is the fundamental premise of the proposed internal accounting mechanism¹. The genesis of the proposed amendments arose through the Section 42A Report and recommendations, which is a public document recommending amendments based on submissions and further submissions. This was filed 20 January 2017 and circulated to all parties.
4. Council staff have held many discussions with various parties before and during the hearings in order to clarify relief, explain matters and address refinements that may be suggested to the recommended position in officer reports such as the section 42A report. Frequently this has happened at short notice and upon request. In this case, the discussions addressed technical matters on the accounting mechanism and supporting policies and were in the context of refining existing recommendations from the Section 42A Report only. These recommendations have been the subject of evidence openly given before the Panel during the hearing, and are contained in the section 42A report that responds to submitters' relief and further submissions.

¹ The text of the draft mechanism can be found at <http://www.boprc.govt.nz/media/598493/2017-03-03-rotorua-te-arawa-lakes-strategy-group-meeting-agenda-public-only-10-march-2017.pdf> - page 163 of RTALSG 10 March 2017 agenda.

5. The report on the caucusing recommendations expressly stated that further submitters had not been involved – and the basis for that:

“It is noted that there are further submitters on the matters discussed here (as proposed by Rotorua Lakes Council) however the further submissions focus on opposition to WWTP discharge, the inappropriateness of policies addressing land use, support for enabling frameworks, and general opposition to elements of PPC10. The recommendations in this document clarify matters already recommended for inclusion (such as through the Section 42A Report). They do not specifically relate to the matters raised by the further submissions.”

6. While it is noted that the Rotorua Te Arawa Lakes Strategy Group has considered the non-statutory accounting mechanism, and has agreed there should be a mechanism relating to rural changes to urbanised land, it is also clearly stated that the Group’s endorsement of the mechanism cannot pre-determine the future WWTP resource consent process.
7. Submissions from BOPRC’s Counsel have consistently stated that this Plan Change 10 process cannot predetermine the outcome of any future resource consent process, and this has also been put to the Rotorua Lakes Council witnesses who have agreed that this is the position, and that the 30 tonnes nitrogen discharge is a current consent condition.
8. The BOPRC staff recommendation put to the Independent Hearings Panel has been to reject a new Lake Rotorua specific restricted discretionary activity for the WWTP, on the basis that this was not the focus of Plan Change 10 and it would be unfair to other parties who might have otherwise been involved.
9. BOPRC staff have continued to oppose a specific policy ““Acknowledge the benefits of municipal wastewater reticulation and treatment to the overall water quality of the Rotorua lakes, and to the health and wellbeing of the community”, on the basis that this departs from the purpose of PPC10.
10. The Panel will hear from the further submitters to Rotorua Lakes Council’s submission before making any determination on these recommendations. There is no fait accompli in terms of the Panel deciding anything in favour of the proposed amendments to PPC10 and these amendments do not agree an increase in nitrogen discharge to Lake Rotorua.

11. The Panel has noted that it expects Counsel for BOPRC to address the legal issue of scope/jurisdiction. This will occur in the closing submissions once all parties have been heard from. The Panel only begins its deliberations on recommendations once it has heard all parties' cases, and then makes its independent recommendations.
12. For these reasons, it is our response that the integrity of Ngāti Uenukukōpako Iwi Trust's submission remains unaffected by the caucusing report content, and there remains the full opportunity to address their submission and concerns before the Panel.

6 April 2017



S E Wooler

Counsel for the Regional Council