File Reference: A2206565

Report To: Lake Rotorua Stakeholder Advisory Group

Meeting Date: 10 November 2015

Report From: Stephen Lamb, Lake Rotorua Policy

Consideration of Opt-Out and Opt-In Approaches

Executive Summary

Members of the Lake Rotorua Stakeholder Advisory Group have presented alternatives to the Draft Rules for consideration. Discussion has centred around the Opt-Out and Opt-In approaches – essentially two options for how nitrogen reduction targets could be portrayed within the Draft Rules. The key difference is whether the reduction targets are fully allocated to 2032 or partially allocated to 2022. The two approaches are discussed in this report and a number of key risks are discussed – particularly the risk to the funding that supports the Integrated Framework.

The report seeks that a recommendation is provided to the Regional Council on a preferred approach.

1 Recommendations

That the Lake Rotorua Stakeholder Advisory Group:

1 Receives the report, *Consideration of Opt-Out and Opt-In Approaches*

2 Provides a recommendation to the Regional Council on a preferred approach.

2 Purpose

The purpose of this report is to present two approaches to setting targets within the draft rules for consideration by StAG. These are the opt-out and opt-in approaches.

3 Introduction

At the StAG meeting of 24 September 2015 a range of presentations were provided by members. The purpose of the meeting was to identify and explore alternatives to the Integrated Framework and policy positions developed to date. The presentations were asked to address the following:

1. The Integrated Framework and the current Draft Rules
2. Any preferred alternatives or amendments to the Integrated Framework and Draft Rules
3. The main implications of their alternative for achieving a sustainable Lake Rotorua.

From this, two specific approaches were debated further at the 13 October 2015 StAG meeting and are discussed below.

4 Approaches

Two alternatives have been focused on since that meeting. These have been termed the "opt-out" or "opt-in" approaches. They can be described as follows:

4.1 Opt-Out

This approach retains the 2032 and managed reduction targets in the draft rules. New policy and methods will set out how Council will respond to future science and policy reviews. If those reviews recommend that a change to nutrient reductions is required, Council would initiate a plan change to reflect new targets (that is, opting-out of the plan targets).

4.2 Opt-In

This approach only includes a managed reduction target to 2022 - equalling 70% of the required nitrogen loss reductions to meet the sustainable lake load. The draft rules would articulate that future targets would be implemented through future plan changes (Opting-In) if substantiated by the science and policy reviews.

5 Advantages and disadvantages of the approaches

The following table provides a view of the advantages and disadvantages of each approach.

Opt-Out Approach	Opt-In Approach
• Key funding streams based on Integrated Framework – commitment has been made to this funding (Funding Deed and Long Term Plan) • Risk that science is wrong and that rules do not accurately reflect required nitrogen/phosphorus reductions • Risk that unnecessary future reduction targets devalue assets now • Certainty of position provided • Supports long term planning for funding streams (Integrated Framework and lakes programme) • If no change in science then one plan change required to achieve target • Meets the RMA requirement to give effect to the RPS - section 67(3)(c)	• Key funding streams are based on Integrated Framework. There is a risk that there funding streams would not be maintained if draft rules do not aim to achieve the sustainable lake load. • Uncertainty of change every five years for property values including potentially tougher Nitrogen and Phosphorus targets • Operating the Incentives Scheme becomes problematic and there is increased risk to achieving the required incentives target • Creates a need for any purchaser of land to understand the ongoing risk • Future plan changes required and associated consultation and legal process requirements • Future plan changes may open way for allocation methodology to be challenged • If no change in science then three plan changes required to achieve target • Potential challenge due to approach only partially meeting the RPS and NPS Freshwater Management • Risk of little farmer-to-farmer NDA trading occurring due to uncertainty, with consequent loss of the market efficiency that trading can provide.

Note that the Opt-In approach has not been tested through the section 32 process and a degree of analysis would need to be re-done or added. Decisions would also be required on what additional consultation would be needed given "Opt-In" is a substantive change in the overall policy package.

The key risk associated with the Opt-In approach is that the funding streams that provide the ability to share the required reductions between the community and the rural sector are based on the Integrated Framework (which is supported by the Oturoa Agreement) and Cabinet decisions that approved the application of $45.5 million of Deed funding.

There is a sizeable risk to the funding if the Integrated Framework is not to be followed. At the 16 October Rotorua Te Arawa Lakes Strategy Group meeting the Ministry for the Environment representative provided the view that the Ministry would need to review its position if the draft rules moved away from the Integrated Framework position.

The targets involve the Incentives Board achieving a 100 tonne permanent reduction in the nitrogen entering the lake. The concept is that the Board purchases from below the 2032 NDA level ("below the line"). If this is not a regulatory position then there is significantly less impetus for sales to the Incentives Board. There is already risk associated with the Incentives Board's ability to achieve its targets – this would add substantially to that risk and this would also need to be considered by the Regional Council who formed the Board. The Incentives Scheme is a critical element of the Integrated Framework.

Certainty is also a key consideration. While it may be argued that uncertainty can be accepted on the basis that the Opt-In approach does not impact as much on property value, the property market would likely respond negatively to the five-year cycle of uncertainty.

6 Amendments to Draft Rules to accommodate approaches

For both approaches the actual key rule additions (policy and method) would look similar. There would be consequential amendments to the Opt-In approach. The following table contains potential wording:

Opt-Out	**Opt-In**
Policy	
Amend Policy LR P1: *To reduce the nitrogen losses from land to Lake Rotorua to achieve the 2032 sustainable lake load as required by the Regional Policy Statement and confirm future targets based on scheduled science and policy reviews.* Amend Adaptive Management Policy LR P3(i)[1]: *Science reviews (set out in LR M2) and subsequent consideration by Council of recommendations*;	Replace policy LRP1: *To reduce nitrogen losses from land to Lake Rotorua to achieve the 70% reduction in managed nitrogen losses in the catchment by 2022 as required by the Regional Policy Statement and introduce future targets based on scheduled science and policy reviews*. Amend Adaptive Management Policy LR P3(i): *Science reviews (set out in LR M2) and subsequent consideration by Council of recommendations;* Amend references to sector proportion reductions (dairy 35.3% and drystock 17.2%) and allocations (for example, LR P4) and replace with equivalents. For example sector

[1] Current Draft wording of LR P3 provided in Appendix 1.

	reductions for 2022 become 11.1% and 5.4%. Also remove references to achieving the 435 t/N target. Amend all policy references to 2032 requirements and replace with 2022 (for example, LR P10). Amend all policy references to managed reduction (for example, LR P8).
Method	
Insert new method[2]: *Regional Council will respond to the recommendations that result from Method LR M2 science reviews through a formal and public decision making process. This may include initiation of a plan change and review of resource consent conditions.*	Insert new method: *Regional Council will respond to the recommendations that result from Method LR M2 science reviews through a formal and public decision making process. This may include initiation of a plan change and review of resource consent conditions.*
Rules	
No change	Delete reference to properties coming under the rules framework in 2022. Amend permitted activity rules to cover all properties unless above 40 ha in effective area. Align permitted activity requirements to: • submit information • to not increase nitrogen loss Delete trading rule relating to managed reduction offsets as unnecessary Amend/delete definitions as required (such as NDA, managed reduction offset)
Schedule 1	
No change	Insert note stating the while the methodology provides managed reduction targets through to 2032 only the 2022 target is a regulatory imposition. The 2027 and 2032 targets are provided for information only.
Schedule 5	
No change	Amend references to targets to ensure regulatory requirement to 2022 only is highlighted.
Schedule 6	
No change	Amend schedule to replace 2032 requirement with 2022 requirement.

7 Other Alternatives

This report does not address other alternatives. The alternatives such as not having rules and starting the process again, re-doing the allocation based on natural capital, or relying on alum dosing as a permanent solution have been canvassed previously. These are alternatives that have been considered and discounted in the past. They have been analysed and debated on the way through the process and are not addressed in-depth here. These positions include:

[2] Current Draft wording of existing method LR M2 provided in Appendix 1.

Have no rules, re-start with a collective science process. This position disregards the robust science programme undertaken to date and res-starts the process with no specific ideas that might lead to a fundamentally different outcome.

Re-do the allocation on a natural capital basis including allocating to forestry land use. This allocation method has been considered. Allocation on a natural capital basis could be applied to just the pastoral sector, or as presented, could be applied to all land uses within the catchment (including bush and forestry). The acknowledged issue is that this has the greatest level of economic disruption as reflected in the 2015 Parsons, Doole and Romera report.

Use alum and discontinue rules. Alum is not considered to be a permanent solution to the issue of water quality. This is tied in with the issue of phosphorus management which Council is currently addressing through analysis of phosphorus sources and manageability.

Allocation to under-devel ope d Māori la nd . This is not an alternative as such but a sub-set of the allocation issue. This issue has been discussed at StAG in relation to where any nitrogen allocation would come from. In response it has been raised that the NDAs are challenging already and further reductions on NDAs may cross a threshold of viability. A specific project is being undertaken to help land owners and Council better understand scenarios for under-developed land under the draft rules. Two issues need to be considered here:

- whether under-developed land (generally low-stocked drystock land) will receive an increase in allocation under the ranges methodology (where blocks with low benchmarks lift to the lower range boundary or with no benchmark are given an average NDA allocation) and
- the historical legal framework created by Rule 11.

This is a sensitive issue and not one that has an easy resolution. While there are different perspectives on what under-development means, in terms of the current draft rules Rule 11 is taken as the starting position on development and opportunity cost. Initial analysis of under-developed land shows that undeveloped land is spread relatively proportionally to total ownership across the catchment (in both Māori and non-Maori ownership

8 An Accord to reinforce commitments

The idea behind having an accord, in a similar way to the Oturoa Agreement, would be to consolidate the collective view of future actions and intent and to reinforce the commitments being made on the basis of the Opt-Out approach. The key commitments would of course relate to the Regional Council's intent to review the science and if necessary change the direction of the Regional Water and Land Plan rules and Regional Policy Statement. These types of documents are non-binding in a legal sense but are potentially powerful in a moral and public commitment sense. The signatures of the stakeholders that sign up to such an agreement are therefore an important part of finalising an accord.

An accord could contain joint objectives, and could record the commitments being made by stakeholders and also aspirations around the ideas, concepts and actions that do not sit comfortably within the Draft Rules or that are very much non-statutory in nature. For example, the following might be statements that signal the Regional Council's commitments:

- Thoroughly consider any science review findings as they relate to the requirements for nitrogen reductions within the Regional Water and Land Plan and Regional Policy Statement.

- Expediting changes to nitrogen reduction requirements within the Regional Water and Land Plan and Regional Policy Statement where any science review (including any consequential analysis) supports such changes.
- Transparency with any scientific findings within or outside the scheduled science reviews.

An “accord review/monitoring” forum would also be a useful inclusion and may align with the need for a “post-StAG” entity that maintains dialogue between landowners and Council.

In terms of signing an accord, this could be open to a wide range of stakeholders to make it a more robust document. This would however increase the risk of disagreement around drafting and there may need to be some open statements included around points of difference. For example, stakeholders may not agree to an action at this stage but may agree to explore the need for an action in the future. An accord would not need to be finalised prior to notification but this would be preferable.

9 Regional Council Position

The Regional Council’s staff position in relation to the two approaches is that the Opt-Out approach is the preferred approach as it achieves the sustainable lake load target. This would be the basis of any staff advice to the Regional Council.

Initial discussions with Regional Councillors show support for an accord as a further way to demonstrate the Council’s commitments under the Opt-Out approach if this was seen as a useful endeavour.

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Appendix 1: Current Draft Rule wording

Policy

Adaptive management

LR P3 To recognise the balance between certainty and the use of best science and good environmental data by using:

(a) the 435 tonne sustainable annual nitrogen load for Lake Rotorua from the operative Regional Policy Statement Policy WL 3B(c);

(b) the 755 tonne load to Lake Rotorua estimated by the ROTAN model in 2011 as the existing benchmark from which nitrogen loss reductions will be determined;

(c) OVERSEER® 6.2.0 for nitrogen discharge allowance allocation purposes; and

(d) the pastoral sector reductions within the Integrated Framework approach;

in order to manage the reduction of nitrogen losses within the Lake Rotorua groundwater catchment; and implementing adaptive management through:

(i) science reviews set out in LR M2;

(ii) regular reviews of the Regional Policy Statement and Regional Water and Land Plan polices, rules and methods under the Resource Management Act 1991;

(iii) five-year individual on-farm Nitrogen Management Plan review timeframes; and

(iv) the use of OVERSEER® reference files and proportional requirements to reduce the variability for individual property Nitrogen targets (as described in Schedule Five).

Method

LR M2 Regional Council will review and publish the science that determined the limits set in the RPS and the Regional Water and Land Plan for Lake Rotorua on a five yearly basis. These reviews may include:

(a) Review of trends in Lake water quality attributes including nitrogen, phosphorus, Chlorophyll a, algal blooms, clarity, trophic level index for in-lake, inflows, and outflow where relevant.

(b) Review of progress towards achieving the RPS Policy WL 6B(c) 2022 catchment nitrogen load target.

(c) Review of the RPS Policy WL 3B(c) catchment nitrogen load, and a nominal phosphorus (external and internal) catchment load of 37 tP/yr[3], and any other nitrogen and Phosphorus load combinations that catchment modelling shows would meet the Lake Rotorua Trophic Level Index[4] of 4.2. This may necessitate:

(i) a review and rerun of the lake model (or any successor model), including its ability to replicate recent years data;

(ii) a review and rerun of ROTAN (or any successor model), including nitrogen loss rates, groundwater trends and attenuation rates, including OVERSEER® or similar estimates;

(iii) an assessment of the efficacy and risks of alum dosing and an assessment of land-based phosphorus loss mitigation.

(d) Review of relevant New Zealand and international lake water quality remediation science.

(e) Recommendations.

[3] This nominal phosphorus load was first determined by Rutherford et al (1989) and confirmed in subsequent advice from the Water Quality Technical Advisory Group.

[4] Trophic Level Index is defined in the Operative Regional Water and Land Plan.