BEFORE COMMISSIONERS APPOINTED
BY THE WAIKATO REGIONAL COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the First Schedule to the Act
AND	
IN THE MATTER	of Waikato Regional Plan Change 1- Waikato and Waipā River Catchments and Variation 1 to Plan Change 1
AND	
IN THE MATTER	of submissions under clause 6 First Schedule
BY	**BEEF+LAMB NEW ZEALAND LIMITED** **Submitter**

CLOSING SUBMISSIONS OF COUNSEL FOR BEEF+LAMB NZ LTD
26 August 2019

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MAY IT PLEASE THE COMMISSIONERS

1. B+LNZ have made submissions on all parts of PC1 and seek amendments that give effect to the superior statutory documents and enable performance of Council's functions under the RMA, while achieving its purpose.

2. B+LNZ is taking the opportunity to close further to the Panel's directions of 4 July 2019. B+LNZ will not be closing in the traditional way, but attaches in table form, as Appendix 1, a summary of its key positions cross-referenced to the evidence and submissions of counsel supporting those matters.

3. Some submitters have been critical of B+LNZ's proposed use of LUC as a proxy for natural capital when allocating nutrients. This closing could be entirely occupied rebutting that evidence, but ultimately there are more efficient ways to close the case. For that reason, B+LNZ relies on the submissions and evidence already filed, which was closely examined at the hearings and addresses the criticisms made. However, I do want to address the recent Environment Court decision *Federated Farmers of NZ Inc* v *Bay of Plenty Regional Council*[1]. In that case appeals to Plan Change 10: Lake Rotorua Nutrient Management, to the Bay of Plenty Regional Natural Resources Plan were being heard. The case discusses LUC and natural capital and requires analysis, which I will return to below.

Scope

4. At the hearing for HS3 Counsel and the Panel discussed B+LNZ's submissions on scope. Questions were raised regarding whether B+LNZ's scope argument "worked too well". The example, raised on several occasions, was the inclusion of a water quantity attribute.

5. The Vision and Strategy includes, amongst other things, objectives to achieve the vision of a healthy Waikato River sustaining abundant life and prosperous communities who restore and protect its health and

[1] [2019] NZEnvC 136.

wellbeing. B+LNZ argued the scope of PC1 was wide because it sets a pathway to achieving the Vision and Strategy for the Waikato River.

6. B+LNZ have submitted the vision of a healthy River and the objectives that provide for it can be understood as more than just water quality. It submits it contemplates a more holistic and integrated suite of characteristics providing for ecosystem health and processes. The four water quality metrics proposed in PC1 are inadequate in themselves to provide for ecological health and also, *inter alia*, give effect to the NPSFM. In order to provide for ecological health and processes consideration of additional attributes to enable Council to perform its statutory functions is required. B+LNZ confirms its submissions from HS3 and adds that it is artificial to constrain the attributes to the four contaminants in the notified plan change for the reasons just explained.

7. In terms of where you "draw the line", particularly in respect of water quantity as an attribute in a water quality plan change, the structure of the Act is important[2]. Part 3 RMA addresses water quantity and water quality (through control of discharges) separately in sections 14 and 15 respectively. The structure of part 3 contemplates a framework for quantity and quality that *may* be regulated separately. The most common way of doing this is through separate chapters in regional plans.

8. For the purpose of scope, Council's must be entitled to advance an orderly review of its plans and policy statements. Here, it is clear this Council had no intention of dealing with water quantity in PC1, which is apparent from the notified plan change. It has made a decision to manage quality and quantity separately in its Plan, meaning it is for it to determine at a later date how subsequent quantity (s 14) plan changes will be consistent with and complement s 15 plan provisions. On the other hand, PC1 clearly addressed water quality through diffuse discharges under s 15.

9. It is submitted you should be suspicious of parties that argue that further attributes are beyond scope as an attempt to constrain your ability to

[2] This submission was made orally at the HS3 hearing and is confirmed here in writing to assist.

fully and properly perform your functions and, in turn, for Council to perform its. It is submitted that the directions in the Vision and Strategy, RPS and NPSFM require additional attributes to provide for ecosystem health to, in turn, achieve the vision of a healthy Waikato River that sustains abundant life and prosperous communities.

Essential Freshwater Proposals for DIN

10. As part of its HS3 case B+LNZ raised concerns about some of the attribute bands proposed in the Expert Witness Conferencing Statement. Since then the Essential Freshwater Report has been released, which accompanies a draft national policy statement[3] that Government is consulting on.

11. As the report and draft NPS have been released for consultation purposes only, they do not represent a final policy position and therefore cannot be given weight as if they were operative. Nonetheless it is noted that the draft proposals have a number of characteristics in common with B+LNZ's case for PC1:

    (a) A focus on ecosystem health when making decisions on the management of freshwater[4];

    (b) The inclusion of additional attributes states to be set as targets to achieve freshwater objectives[5];

    (c) A new attribute state for dissolved inorganic nitrogen (DIN)[6]. That attribute provides for a national bottom line of 1.0 DIN mg/L, which is consistent with the evidence from Dr Mueller and Ms Jordan from HS1[7]; and

[3] Ministry for the Environment 2019 *Action for healthy waterways, A discussion document on national direction for essential freshwater* and the Draft National Policy Statement for Freshwater Water Management
[4] See 5.2.
[5] See 5.3.
[6] See Table 5 of draft NPSFM.
[7] See submissions of Counsel for HS3 at paragraph 34 and footnotes 25 and 26 for references.

(d) An adaptive management approach to deposited sediment requiring monitoring[8].

12. The Report also proposes additional explanation of the concept of Te Mana o te Wai, which is likewise consistent with B+LNZ's case on the proper interpretation of the Vision & Strategy and part 2 RMA. The draft NPSFM discusses how Te Mana o te Wai informs freshwater management in a way that prioritises the mana, mauri and overall health and wellbeing of freshwater bodies as a priority, followed by essential human needs and then other uses. That first priority is already reflected in the operative NPSFM, which provides for matters of national significance relevant to achieving the purpose of the Act in section 5[9].

13. It is submitted that the clarification provided in the draft NPSFM rests hand in glove with the approach B+LNZ has urged you to take in respect of the interpretation of the Vision & Strategy as consistent with the sustainable management purpose of the Act and the importance of a full suite of attributes that seek to provide for ecosystem health.

LUC and NC – Lake Rotorua Decision

14. In *Federated Farmers of NZ Inc* v *Bay of Plenty Regional Council*[10] (the PC 10 Decision) the Court expressed a number of concerns about the natural capital based approach proposed by appellants in that case. That proposal shared some high level similarities with what B+LNZ is proposing for PC1, but differed in a number of material ways.

15. Material matters distinguishing that proposal from B+LNZ's approach in PC1 include:

(a) The resource being managed was a groundwater catchment with freshwater objectives for Lake Rotorua c.f. the riverine system of the Waikato and Waipā Rivers.

(b) A different statutory context because of the Vision & Strategy;

[8] See paragraph 59 of HS3 Submissions of Counsel.
[9] See, inter alia, s 45A.
[10] See citation above.

(c) The imposition of a total allocation of 600 tN/year, putting a cap on the amount of N that could be allocated to LUC classes rather than the flexible cap approach proposed by B+LNZ;

(d) A comprehensive assessment of natural capital based approaches was undertaken by Council as part of its preparation for PC10. This resulted in unchallenged evidence that reductions in total economic value under the natural capital approach were greater[11] than the integrated framework proposed by the Regional Council, which included benchmarking N & P based upon grouping land uses into five sectors, amongst other things[12]. In PC1 Dr Cox's modelling has demonstrated the original NIWA model that the economic and scenario modelling was based, is flawed as it underestimates the relative contribution of sectors to water quality and N attenuation[13]. It also significantly underestimated the cost to an extensive farming system of meeting the requirements of PC1 while being grandparented to an historic nitrogen reference point [14]; and

(e) The robustness of the ROTAN[15] Model as a model for predicting future loading of N in the catchment[16].

16. Importantly the PC10 Decision makes it clear, probably in response to the One Plan and Hawkes Bay PC6 decisions[17], that *considerable caution should be exercised* before using it to come to general conclusions about the suitability of natural character based allocation methods; a thorough evaluation of the appropriateness in the circumstances of the region or waterbody is required[18].

17. The complexity of Lake Rotorua catchment is highlighted by the Court, along with its unique circumstances, some of which are set out above.

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[11] See [308] – [311].
[12] See [172].
[13] Including failing to account for the significant reduction in land under sheep and beef systems and coupled with the intensification of other sectors
[14] See paragraphs 12 and 13 of Dr Cox's HS2 Executive Summary for a summary.
[15] ROtorua TAupo Nitrogen Model.
[16] See [121].
[17] See footnote 34 and 35 of HS2 submissions for citations.
[18] See [40].

The time, effort, energy and money expended by the Council over more than a decade building the ROTAN Model is also likely to have played a part in the Court reaching that conclusion. Whilst there has been considerable work undertaken by the Regional Council for Plan Change 1, it does not compare. This is particularly so because a number of the models and conclusions are challenged by submitters, including B+LNZ.

18. Surprisingly, the Court concluded that LUC on its own is not a proxy for natural capital[19]. This is despite earlier in the decision recording agreement between the experts that LUC *can* be used as a proxy[20].

19. In anticipation of other parties making this point, it is submitted that this conclusion is contextual in all the circumstances of PC10. It is not intended by the Court, when the decision is read as a whole[21], to be a determinative statement on the use of LUC as a proxy and the evidence of Dr McKay. This is how that statement can be reconciled with earlier decisions of the Court that have found the opposite.

20. It is submitted the single most significance difference between PC10 and B+LNZ's PC1 proposal is the latter's use of a legume based pasture system as part of the natural capital allocation method. B+LNZ's approach is to regulate based on a flexibility cap rather than a policy requirement to achieve any (LUC) outcomes. Farmers may proceed via a stocking rate or N leach under a permitted activity rule, based on the sustainable yield of a legume based pasture without inputs[22].

21. One advantage of using the legume based system is that it is practical and easy to understand for farmers. If inputs are required it means they are farming beyond the upper production limits of the land. In other words, farming beyond the grass curve, which leads to discharges with a greater effect on the health and wellbeing of water bodies[23]. The rule cascade works so that where discharges are in excess of the carrying capacity of the land mitigations are required, which are put in place via

[19] See [364].
[20] See [208].
[21] Particularly paragraph 40 cited above.
[22] See Ms Jordan's HS2 evidence at [47] and [48] and references to evidence of Drs Mackay and Dewes.
[23] Often from nitrogenous fertlisers.

a resource consent process that must, ultimately, achieve the freshwater objectives in the Plan.

22. A further advantage of the B+LNZ proposal is that it minimises the impacts of any uncertainty from modelling[24]. That is because the performance of a legume-based system is readily identifiable and able to be "ground-truthed" i.e. you are either adding inputs or you are not[25].

23. B+LNZ's case has focused on the technical robustness of its natural capital allocation method. It says that in the context of the Vision & Strategy its proposed approach achieves the purpose of the Act in a way that recognises a fair distribution of the "pain" that a change in allocation will cause communities and sectors in the region. It repeats its submission from HS1 that it is important for certainty and good resource management decision making for these hard calls to be made now, rather than deferring to a later date with no certainty as to medium or long term outcomes.

24. The natural capital approach recognises the intergenerational nature of restoring and protecting the health and wellbeing of the River. Change and improvement will take time and moving toward a more productive use of land based on its characteristics puts all sectors on a level playing field and avoids undue focus on so-called sunk capital (grandparenting). Economic imperatives change, but the fundamental characteristics of the soil do not[26]. B+LNZ's approach sends clear signals to the community that farming on a permitted basis will require internalisation of effects. It is strategically advantageous because it allows a trajectory of change to be set by Council, should it chose to, by making it progressively more difficult, on a policy basis in subsequent plan changes, to obtain resource consent unless the mitigations put in place are achieving the outcomes (freshwater objectives) mandated by the Plan.

[24] Raised by a number and parties and discussed by, inter alia, Drs Cox and Chrystal.
[25] Subject to the optimisation of the soil fertility e.g. Olsen P.
[26] At least not within timeframes that are useful for this discussion.

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26 September 2019

Appendix 1 – Key Evidence and Submissions

Topic	Document	Reference	Comments
Vision & Strategy and Part 2 RMA (and therefore national policy direction) are consistent.	HS1 Submissions of Counsel	[15], [46] – [56] & [100] – [109]	The Vision & Strategy recognises the elements of the definition of sustainable management in its objectives. See also HS2 submissions from [17].
Difficulties assessing effectiveness and efficiency of PC1 where it concedes the provisions will not necessarily implement the objectives and the need for certainty.	HS1 Submissions of Counsel	[42] – [45], [59] – [61] & [77] – [86]	
	Evidence of C Jordan HS1	[132] – [136]	
	Evidence of A Dewes	[161] – [162]	
Table 3.11-1 and its relationship with the values of the Plan - the health of the River under the Vision & Strategy requires more than a focus of water quality and the four contaminants.	HS1 Submissions of Counsel	[69] & [92] – [99]	See also submissions for HS3 on Expert Witness Conferencing Statement and difficulties arising from it.
	Evidence of H Mueller	[35] – [48]	
	Evidence of G Kessels	[46] & [71] – [74]	
	Evidence of C Dada	[66] – [68] & [75]	
	Evidence of C Jordan HS1	[86] – [91] & [174] - [177]	
Profile of sheep & beef sector	Evidence of S McIvor HS1		
	Executive Summary A Burtt	[8] – [26]	
	Memorandum of Counsel Providing Answers to HS1 Questions 30 April 2019	Appendix MC7	
Engagement, the resilience of the sheep & beef sector and the desirability for flexibility.	Evidence of R Beetham	[81] & [83]	This flexibility is preferable to a grandparenting approach that constrains change from a point in time and takes that flexibility away. Appendix MC9 demonstrates that the NRP reference years were dry and to that extent atypical.
	Evidence of R Parkes HS1	[82]	
	Evidence of A Burtt	[104] & [110]	
	Memorandum of Counsel Providing Answers to HS1 Questions 30 April 2019	Appendix MC9	

Land use change required to achieve the notified freshwater objectives and an alternative approach	Evidence of T Cox for HS1	[27], [26], Table 4, [102] & [103]	
	Evidence of R Beetham	[70] – [74] & Table 4	
	Evidence of C Jordan for HS1	[185]	
Uncertainties in Council modelling and Dr Cox's alternatives	HS1 Submissions of Counsel	[121] – [126]	Dr Chrystal provided alternative N loss values for the sheep and beef and dairy sectors and concluded the PC1 values did not accurately account for sector contributions – they were too low. Dr Cox also raised concerns about the sector allocations in his HS2 evidence.
	Evidence of J Chrystal HS1	[162] – [178]	
	Evidence of T Cox for HS1	Figures 1 – 3, [118], [124] – [142]	
	Evidence of C Jordan HS1	[184] – [185]	
	Submissions of Counsel HS2	[65]	
	Evidence of T Cox for HS2	Tables 1, 3, 4, 9 & 10	
	Evidence of C Jordan HS2	[121] & Figure 1	
	Memorandum of Counsel Providing Answers to HS1 Questions 30 April 2019	MC6	
Allocation based on NRP as the key policy driver is flawed as grandparenting. Inherent capability of land to sustainably support a land use should be preferred. - LUC & natural capital based allocation with an N flexibility cap.	HS2 Submissions of Counsel	[8] – [11], [49] – [51], [56], [82] – [91]	[82] – [91] of Counsel's submissions are a summary of the general B+LNZ policy approach.
	Evidence of S Stokes	[29] – [31], [37]	
	Evidence of A Mackay	[22], [41] – [43] & [69]	
	Evidence of R Beetham	[83]	
	Evidence of A Dewes	[134], [169] – [175]	
	Evidence of C Jordan HS2	[57], [61], [64] – [66], [131] – [136] & Appendix 1	
	Evidence of T Cox HS2	[37], [41] & Table 10	
Productive potential based on legume based system as basis of stocking rate and N leach permitted activity rule.	Evidence of A Mackay	[41] – [43], [48] & [55] – [65]	
	Evidence of A Dewes	[131]	

	Evidence of C Jordan HS2	[46] – [51]	
Economic impacts of proposed natural capital approach.	Evidence of A Dewes	[137] – [160]	
	Evidence of J Chrystal HS1	[207] – [208]	
	Evidence of C Jordan HS2	[101]	
	Evidence of R Parkes HS1	[82]	
	Evidence of A Burtt	[104] & [110]	
	Memorandum of Counsel Providing Answers to HS1 Questions 30 April 2019	Appendix MC9	
Proposed rule cascade	HS2 Submissions of Counsel	[107] – [117]	
	Evidence of C Jordan HS2	[119] – [123]	
Tailored farm environment plans / land environment plans	Evidence of R Beetham	[81] – [82] & [92]	See also LUC and natural capital section.
	Evidence of R Parkes for HS2	[22], [34], [74] – [75], [79]	
	Evidence of C Jordan HS2	[177], [180]	
	Evidence of S Stokes	[56]	
Fencing and stock exclusion rules	Evidence of R Beetham	[84] – [91]	
	Evidence of C Dada	[65]	
	Evidence of G Kessels	[51], [53]	
	Evidence of R Parkes HS2	[73] – [74] & [79]	
	Evidence of C Jordan HS2	[153], [158] - [160], [167], [171]	
	Evidence of C Jordan HS3	[45], [48] & [50]	
Use of sub-catchment planning	Evidence of R Parkes HS3	[48], [50] – [51] & Figure 3	
	Evidence of M Whately	[45], [47], [57] – [58]	
	Evidence of C Jordan HS3	[28], [33] – [34]	