

# Draft Rules Development for the Lake Rotorua Catchment

**NB:** This rules summary is drawn from a related draft paper being prepared for the Rotorua Te Arawa Lakes Strategy Group meeting scheduled for 19 March 2014.

## Policy analysis

Key policy analysis to support the drafting of the rules includes:

### *Elements of rule design confirmed*

The following high level elements of rule design reflect staff interpretation of discussions to date with StAG:

- Resource consents will be required on properties above a certain size, or leaching a certain amount of nitrogen
- NDAs will be allocated to all properties requiring a resource consent
- NDAs will be based on sector averaging and ranges within those sectors will be used
- Farm nutrient plans will be a condition of all consents
- All Farm Nutrient Plans will show how landowners will make nutrient reductions over time towards their NDAs
- Any small block that operates as part of a larger block (>40 hectares) falls under the NDA rules applicable to the larger block
- New rules should still enable nutrient trading like the current Rule 11D
- Phosphorous loss may be subject to existing Rule 11 provisions and nutrient benchmarks or possibly good practice requirements within the farm nutrient plan.

### *Rule hierarchy proposed*

The RMA allows Councils to classify activities in a rules hierarchy, as follows: permitted, controlled, restricted discretionary, discretionary, non-complying and prohibited. This provides a cascade approach that allocates an activity class according to the severity of effects. In our case, the effects arise from the rate of nitrogen loss per hectare and the total loss of nitrogen per property.

Staff are proposing a rule structure that reflects the rules hierarchy and uses a combination of permitted, controlled and non-complying rules. This combination of classes of activities is similar to the Waikato Regional Council approach, which has been tested in the Environment Court. Of particular note, the judge supported the default activity class to be non-complying as they are more restrictive than discretionary. Non complying activities send a signal that the activity is generally not condoned and that a strong case needs to be made to support it.

A logical starting point for developing rules is determining which land uses could be managed through conditions on permitted activities. With any permitted activity, Council needs to be confident that compliance with any permitted activity conditions will ensure we can still meet our catchment target, or at least the proportion associated with activities being given permitted status.

Through consideration of permitted activities, StAG and staff agreed all properties larger than 2 ha with a discharge over 10kg N/ha/yr and all properties larger than 40 ha will require resource consent.

The table below provides examples of activity classes for different land use activities that reflect the scale of effect. A set of conditions is being developed to specifically address nitrogen loss from each land use activity.

<b>Permitted</b>	<ul style="list-style-type: none"> <li>• Nitrogen loss from properties up to 2 ha</li> <li>• Properties between 2ha to 40 ha that discharge less than 10kg N/ha/yr</li> <li>• Forest</li> </ul>
<b>Controlled</b>	<ul style="list-style-type: none"> <li>• Nitrogen loss from properties larger than 40 ha or properties discharging over 10kg N /ha/yr that have approved Farm Nutrient Plans.</li> <li>• Trading of nutrient discharges that allows increase in nitrogen loss if it can be offset in the same catchment</li> </ul>
<b>Non Complying</b>	<ul style="list-style-type: none"> <li>• Nitrogen loss from properties that do not meet Permitted and Controlled rule requirements.</li> <li>• Increases in nitrogen loss that are not offset</li> </ul>

## Issues of clarification

During the September round of meetings with Council, Partners and stakeholders, it became apparent some points in the proposed framework needed urgent clarification in order to progress rule development.

### ***Effective Land Use***

Stakeholders have asked for clarification on how NDAs would be allocated on properties, given many farms are made up of different parcels of land use. Modelling has relied on the effective land use being the basis for the NDA (e.g. milking platform or runoff block), rather than property type (e.g. dairy farm). This means that a property's NDA will be the sum of all relevant land use parcels (and their associated NDAs) that occur on that property.

The concept of "effective area" and how it will apply through the allocation process is relatively complex. Staff have prepared some 100ha square farm scenarios to help explain how the allocation process might work in practice (see Appendix One). StAG are working with staff on the best way to communicate this concept to landowners before consultation on the rules.

### ***Groundwater and surface water boundaries***

As noted in the September report, the groundwater catchment boundary that is used to model the total lake load in ROTAN is larger than the surface water catchment boundary used for most other catchment purposes (e.g. Rule 11). There are several issues associated with this:

- There is detailed information available for most of the groundwater catchment, but not the entire catchment. Staff are currently working on extending the detailed land use information currently available out to the groundwater boundary. There are some uncertainties with the groundwater catchment boundary, and exactly where the boundary line lies. This has

implications for any new rules that will capture nitrogen loss from the groundwater catchment. The definition of the boundaries needs to be defensible in the Environment Court and work is currently underway to improve certainty around the boundary line.

- Some parts of the groundwater catchment lie in the Waikato region, and some parts are in areas that have not been subject to rules such as Rule 11. Once science advice is received on the catchment boundary, staff will engage with Waikato Regional Council and other landowners to determine how we can meet reductions required.

## **Further supporting work and analysis**

### **Development of a stock intensity table**

A look-up table is being developed to help landowners in the Lake Rotorua catchment determine whether they are likely to meet permitted activity conditions (e.g. less than 10kgN/ha/yr) without needing to undertake expensive nutrient modelling. The look up table will be provided as an advice note, for guidance purposes only.

### **Use of Overseer in rules**

Staff are considering if and how to use the Overseer nutrient model to regulate reduced nitrogen losses in the Lake Rotorua catchment. An expert workshop was recently convened to provide Council with advice on the regulatory use of Overseer, by drawing on comparable NZ experiences, literature and professional advice. A report is now being prepared to help identify ways to manage the uncertainty that comes with the use of Overseer as a regulatory tool.

### **Design of Farm Nutrient Plans**

It has been agreed by stakeholders that Farm Nutrient Plans will be a key mechanism for the consenting process, and will identify how landowners will get to their NDAs by 2032. Staffs, together with industry, are developing a farm nutrient plan template that will be fit for this regulatory purpose.

### **Change in Overseer versions**

Current Rule 11 benchmarks and subsequent analysis to determine appropriate NDAs have been based on nitrogen losses predicted by Overseer 5. The proposed NDA ranges of 10-20 kgN/ha for drystock farms and 30-40 kgN/ha for dairy farms are also based on Overseer 5.

There is a significant change in predicted losses coming from the latest Overseer 6 version. All property benchmarks are now being converted to this new version, and once this work is done, further analysis will be required to update the proposed NDA ranges.

### **Further economic impact analysis**

A project is being undertaken to run representative dairy and drystock farms through Overseer and Farmax scenarios to be able to measure the financial implications of the proposed NDA ranged at an individual farm level. This will support consultation on the draft NDAs by enabling farmers to understand likely NDA impacts on their farm systems. It will also inform decisions on potential adjustments to the draft NDA ranges and the underlying allocation regime.

The supporting work outlined above will inform the on-going refinement of the draft rules.

*The report was prepared by BOPRC's Lisa Power, dated 5 March 2014*