

**BEFORE THE ENVIRONMENT COURT**

**IN THE MATTER OF** the Resource Management Act  
1991

**AND**

**IN THE MATTER OF** an appeal pursuant to clause 14  
(1) of the first schedule to the  
Resource Management Act

**BETWEEN** **FEDERATED FARMERS OF NEW  
ZEALAND INC.**

Applicant

**AND** **HAWKE'S BAY REGIONAL  
COUNCIL**

Respondent

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**NOTICE OF APPEAL TO ENVIRONMENT COURT  
AGAINST DECISION ON PROPOSED POLICY STATEMENT OR PLAN**  
Clause 14(1) of First Schedule, Resource Management Act 1991

**Federated Farmers of New Zealand (Inc)**

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To: The Registrar  
Environment Court  
P O Box 5027  
Lambton Quay  
WELLINGTON

I, Federated Farmers of New Zealand (Inc), appeal against a decision of the Hawke's Bay Regional Council on the following policy statement or plan:  
Proposed Hawke's Bay Regional Coastal Environment Plan

I made a submission on that plan.

I received notices of the decision referred to in this appeal on 22 July 2008.

The decision was made by Hawke's Bay Regional Council.

The decision (or part of the decision) that I am appealing is:

(see attached schedule 1)

The reasons for the appeal are as follows:

(see attached schedule 1)

I seek the following relief:

(see attached schedule 1)

I attach the following documents to this notice:

- (a) a copy of my submission
- (b) a copy of the relevant decision (*or* part of the decision):
- (c) any other documents necessary for an adequate understanding of the appeal:
- (d) a list of names and addresses of persons to be served with a copy of this notice.

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HJ Gubb  
for Federated Farmers of New Zealand (Inc)

2 September 2008

Address for service of appellant:

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Policy Advisor  
Federated Farmers of New Zealand (Inc)  
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## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may become a party to the appeal if you made a submission on the matter of this appeal; and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

The copy of this notice served on you does not attach a copy of any other documents necessary for the adequate understanding of the appeal (of which there were none), or a list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

## **Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

**The Auckland address** of the Environment Court is:

8<sup>th</sup> Floor, District Court Building  
3 Kingston Street  
Auckland

Its postal address is:

P O Box 7147  
Wellesley Street  
Auckland

And its telephone and fax numbers are:

Telephone: (09) 916 9091  
Fax: (09) 916 9090

**The Wellington address** of the Environment Court is:

The District Court Building  
43 – 49 Balance Street  
Wellington

Its postal address is:

P O Box 5027  
Lambton Quay  
Wellington

And its telephone and fax numbers are:

Telephone: (04) 918 8300  
Fax: (04) 918 8303

**The Christchurch address** of the Environment Court is:

83 Armagh Street (corner Durham Street)  
Christchurch

Its postal address is:

P O Box 2069  
Christchurch

And its telephone and fax numbers are:

Telephone: (03) 962 4170  
Fax: (03) 962 4171

## Schedule 1: FFNZ Decisions Appealed, Reasons for the Appeals and Relief Sought

### 1 (i) **Subject matter and provision in the Proposed Plan**

Report 203 Topic 1, Chapter 4 Indigenous Vegetation and Habitats, Decision 146

The appellants made a submission [40/5] seeking to amend Objective 4-1 to better reflect Resource Management Act 1991 (RMA) obligations. FFNZ believes that a better balance needs to be struck between protection of indigenous vegetation and providing for landowners social and economic wellbeing. This would be achieved by recognising that the qualifier is 'significant' ecosystems rather than 'important' ones. The term 'important' is too broad and open to interpretation and as such creates uncertainty.

The respondent did not accept the submission on the basis that defining terms used in section 6 of the RMA for the purposes of the RCEP runs the risk of inaccurate interpretations that case law, good practise and/ or common meanings may naturally reach now and in the future.

### (ii) **Summary of reasons for the appeal**

FFNZ sort to amend Objective 4-1 to better reflect the intentions of the RMA and provide some certainty for plan users by using terms which are well understood and defined by case law. The reasoning of the respondent is not accepted, both Issue 4-1 and Anticipated Environment Results use section 6 terminologies and refer to significant areas of indigenous vegetation and significant habitats of indigenous fauna.

### (iii) **Relief Sought**

Amend Objective 4-1 to read:

*"Protection of regionally and nationally areas of significant indigenous vegetation and significant habitats of indigenous fauna ~~important ecosystems and other natural and physical resources~~ within the coastal environment from inappropriate subdivision, use and development".*

### 2 (i) **Subject matter and provision in the Proposed Plan**

Report 203 Topic 2, Chapter 4 Indigenous Vegetation and Habitats, Decision 160.

The appellants made a submission [40/6] acknowledging and generally supporting the purpose of Policy 4-1. However FFNZ submits that the requirement to avoid adverse effects is not always viable and that in those situations the ability to remedy or mitigate should be recognised as per the Act.

## Schedule 1: FFNZ Decisions Appealed, Reasons for the Appeals and Relief Sought

The respondent rejected this submission on the basis that the policies are necessary and appropriate to assist in the implementation and achievement of the RCEP's objectives.

### (ii) **Summary of reasons for the appeal**

The objective in relation to Chapter 4: Indigenous Vegetation and Habitats states that important ecosystems and other natural and physical resources within the coastal environment will be protected from **inappropriate** (emphasis added) subdivision, use and development. The objective clearly recognises that not all development is inappropriate. FFNZ submits that implementation and achievement of this objective requires policies which also recognise that not all adverse effects must be avoided in every instance.

### (iii) **Relief Sought**

Amend Policy 4-1 to read:

*"To ensure adverse effects on ecological systems (including natural movement of biota, natural biodiversity, productivity and biotic patterns) are avoided, remedied or mitigated, including adverse effects on..."*

## 3 (i) **Subject matter and provision in the Proposed Plan**

Report 301Topic 4, Chapter 27.2 Discharges to Air/Land/Water in Coastal Margin, Decision 343

The appellant made a submission [40/29] acknowledging the purpose of the conditions to Rule 13 but seeking to introduce some flexibility and practicality into the method of demonstrating compliance with the Rule.

The respondent did not accept the submission and no reasoning was provided to explain that decision.

### (ii) **Summary of reasons for the appeal**

Federated Farmers understands the requirement for demonstrating compliance with permitted activity standards/ conditions and terms. However the requirement under Rule 13(h) to provide a specific management plan is not necessary and could be unduly onerous on the resource user to demonstrate compliance with the Rule.

The term 'management plan' is not defined and as such the resource user has no certainty or guidance as to what is required to develop one of these plans. In the appellant's opinion some flexibility in meeting this requirement is needed. Further, we do not believe that the proof of compliance would be compromised with a more flexible method it will simply reduce unnecessary costs.

It is submitted that any form of information which shows how conditions may be met should be appropriate rather than a specified management plan.

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### (iii) Relief Sought

1. Amend Rule 13 permitted activity conditions as follows:
  - (h) Upon request by the HBRC, ~~a management plan shall be submitted to HBRC~~ information shall be provided by the resource user setting out how the conditions above will be met.
2. Further, that this amendment is made to all subsequent rules relating to management plans, including but not limited, to Rules 14(h) as per submission 40/30, and 17(f) as per submission 40/31.

### 4 (i) Subject matter and provision in the Proposed Plan

Report 305 Topic 2, Chapter 27.5 Discharges to Air, Decision 556

The appellant made a submission [40/26] seeking to have the permitted activity standards under Rule 72 reflect the enabling intent of the RMA and link the controls over discharges to the extent they cause an adverse effect.

The respondent did not accept the submission and no reasoning was provided to explain that decision.

### (ii) Summary of reasons for the appeal

Federated Farmers acknowledges the concept of internalisation of adverse effects. However, we contend that total internationalisation of effects is not always able to be undertaken or at any cost. A measure of reasonableness must be applied. In these circumstances adverse effects should be avoided, remedied or mitigated. Therefore, we are of the view that this rule should include a proviso linking the standards to adverse effects.

### (iii) Relief Sought

Amend Rule 72 permitted activity conditions as follows:

- (c) The discharge shall not result in any visible discharge of any material, including dust, beyond the boundary of the subject property to the extent it causes an adverse effect, taking into account the character of the zone in which the discharge takes place.
- (d) The discharge shall not result in any airborne liquid contaminant being carried beyond the boundary of the subject property to the extent it causes an adverse effect, taking into account the character of the zone in which the discharge takes place.

## Schedule 1: FFNZ Decisions Appealed, Reasons for the Appeals and Relief Sought

### 5 (i) **Subject matter and provision in the Proposed Plan**

Report 310 Topic 4, Chapter 27.2 Discharges to Air/Land/Water in Coastal Margin, Decision 650

The appellant made a submission [40/20] seeking to have the permitted activity standards under Rule 18 reflect the enabling intent of the RMA and link the controls over discharges to the extent they cause an adverse effect.

The respondent did not accept the submission on the basis that the amendments are unnecessary and inappropriate and not the most appropriate means of assisting HBRC to fulfil its resource management functions. Further it was stated that the amendments would not provide certainty and clarity for Plan users.

### (ii) **Summary of reasons for the appeal**

Federated Farmers acknowledges the concept of internalisation of adverse effects. However, we contend that total internationalisation of effects is not always able to be undertaken or at any cost. A measure of reasonableness must be applied. In these circumstances adverse effects should be avoided, remedied or mitigated. Therefore, we are of the view that this rule should include a proviso linking the standards to adverse effects.

### (iii) **Relief Sought**

Amend Rule 18 permitted activity conditions as follows:

- (f) The discharge shall not result in any airborne liquid containment being carried beyond the boundary of the subject property to the extent it causes an adverse effect, taking into account the character of the zone in which the discharge takes place.

### 6 (i) **Subject matter and provision in the Proposed Plan**

Report 310 Topic 4, Chapter 27.2 Discharges to Air/Land/Water in Coastal Margin, Decision 651

The appellant made a submission [40/21] seeking to have the permitted activity standards under Rule 19 reflect the enabling intent of the RMA and link the controls over discharges to the extent they cause an adverse effect.

The respondent did not accept the submission on the basis that the amendments are unnecessary and inappropriate and not the most appropriate means of assisting HBRC to fulfil its resource management functions. Further it was stated that the amendments would not provide certainty and clarity for Plan users.

## Schedule 1: FFNZ Decisions Appealed, Reasons for the Appeals and Relief Sought

### (ii) Summary of reasons for the appeal

Federated Farmers acknowledges the concept of internalisation of adverse effects. However, we contend that total internationalisation of effects is not always able to be undertaken or at any cost. A measure of reasonableness must be applied. In these circumstances adverse effects should be avoided, remedied or mitigated. Therefore, we are of the view that this rule should include a proviso linking the standards to adverse effects.

### (iii) Relief Sought

Amend Rule 19 permitted activity conditions as follows:

- (d) There shall be no visible discharge of any material including dust, beyond the boundary of the subject property, unless written approval is obtained from the affected property owner to the extent it causes an adverse effect, taking into account the character of the zone in which the discharge takes place.

## 7 (i) Subject matter and provision in the Proposed Plan

Report 507 Topic 6, Chapter 27.6 Land Use Activities in Coastal Hazards Zones, Decision 1554

The appellant made a submission [40/34] seeking to change the activity status of Rule 87 controlling building work in CHZ1 from Non-complying to Controlled with appropriate conditions.

The respondent did not accept this submission on the basis that changing the activity classification to permitted, controlled or restricted discretionary is not the most appropriate means of assisting HBRC fulfil its functions and responsibilities under the RMA.

### (ii) Summary of reasons for the appeal

Federated Farmers understands the intent of this provision however we believes this classification category is unduly onerous on property owners. The presumption is that resource consent is unlikely to be granted if the activity falls within the non complying category. This is a considerable concern for the property owners' identified within the Hazard Zone 1 area as it will effectively be unavailable for any development at all. The resulting implications of loss of value and opportunity are unacceptable to our members.

In our opinion a Restricted Discretionary classification with appropriate conditions would achieve a dual purpose of satisfying council RMA obligation and go some way towards alleviating property owner's concerns.

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Further, we do not believe that the 'precautionary approach' would be compromised with a less stringent activity classification.

### (iii) **Relief Sought**

Amend classification category of Rule 87 to 'Restricted Discretionary' with appropriate conditions