

BEFORE THE ENVIRONMENT COURT

ENV 2011-

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 of
the Act

BETWEEN **FEDERATED FARMERS OF
NEW ZEALAND**

Appellant

AND **KAIPARA DISTRICT COUNCIL**

Respondent

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

Federated Farmers of New Zealand

To: The Registrar
Environment Court
PO Box 7147
DX:CX10086
Auckland 1141

Federated Farmers of New Zealand appeal against a decision of the Kaipara District Council on the following plan:

Kaipara District Plan

Federated Farmers of New Zealand made a submission and a further submission on that plan.

Federated Farmers of New Zealand received notice of the decision referred to in this appeal on 30 September 2011.

The decision was made by Kaipara District Council.

The decisions (or parts of the decision) that Federated Farmers of New Zealand are appealing are:

1 Summary of the decision specific provision or matter

General submission on Overlays.

Summary of reasons for the appeal

The Council decision was to reject the submission.

Federated Farmers appeals that the Overlays should be deleted as they are not necessary to maintain amenity values as per Section 7(c) of the RMA, nor are Overlays identified in Variation 1 of the District Plan as Outstanding Natural Landscapes and Features as per Section 6(b) of the RMA.

The majority of these Overlay Areas derive their amenity values from human activity, mainly farming. They have also been zoned as Rural, which indicates that primary production activities occur here and are appropriate. These areas are not Outstanding Natural Landscapes or Features that have been identified in Variation 1 on Chapter 18 of the Plan.

Federated Farmers considers that rural zoning, subdivision and development rules are in place to help ensure that the rural landscape remains rural in character, therefore amenity values are already being maintained and enhanced by the Rural Zone provisions. Overlay Areas are unnecessary to have regard to Section 7(c) and should be deleted. Subsequently rules should be consistent and apply throughout the entire Rural Zone, there is no need for separate Overlay Area rules.

Relief Sought

- That all Overlay provisions and mapping are deleted from the Kaipara District Plan.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

2 Summary of the decision specific provision or matter

Submission 174/3 on Policy 4.5.3

Summary of reasons for the appeal

The Council decision was to reject submission 174/3.

Federated Farmers appeals that Policy 4.5.3 should be amended to focus on the adverse effects of activities, rather than on the scale, location or design of the activity itself. Providing for adverse effects to be avoided, remedied or mitigated is consistent with the RMA, other policies in this section, and also provides options for managing effects from activities. The terms *avoid, remedy or*

mitigate provide the resource user with much more understanding as to how land use will be regulated, the term *managing* is considered to be less informative.

Relief Sought

- That all Overlay provisions and mapping are deleted from the Kaipara District Plan, or
- That Policy 4.5.3 is amended to read:

~~*By managing the scale, location and design,*~~ *Avoiding, remedying or mitigating adverse effects of activities particularly with respect to built form to maintain amenity values and protect natural character within the West Coast Overlay.*

- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point

3 Summary of the decision specific provision or matter

Submission 174/6 on Policy 4.5.7

Summary of reasons for the appeal

The Council decision was to reject submission 174/6 to Policy 4.5.7

Federated Farmers appeals that Policy 4.5.7 should be amended to focus on the adverse effects of activities, rather than on the scale, location or design of the activity itself. Providing for adverse effects to be avoided, remedied or mitigated is consistent with the RMA, and also provides options for managing effects from activities. The Policy does not state the purpose as to why scale, location and design of activities is to be managed. The terms *avoid, remedy or mitigate* provide the resource user with much more understanding as to how land use will be regulated, the term *managing* is considered to be less informative.

Federated Farmers appeals that the inclusion of the terms *remedying or mitigating* along with *avoiding* will be consistent with the RPS. Other policies relating to the East Coast Overlay will have this terminology so Policy 4.5.7 should as well, to retain consistency.

Relief Sought

- That all Overlay provisions and mapping are deleted from the Kaipara District Plan, or
- That Policy 4.5.7 be amended to read:

~~*By managing the scale, location and design*~~ *avoiding, remedying or mitigating adverse effects of activities, particularly with respect to built form in to protect natural character and maintain and enhance the amenity values of the East Coast Overlay.*

- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point

4 Summary of the decision specific provision or matter

Submission 174/10 on Policy 6.6.4

Summary of reasons for the appeal

The Council decision was to reject submission 174/10 on Policy 6.6.4

Federated Farmers appeals that information on areas of significant indigenous vegetation should be collected by the Council as part of their Section 6c) obligations to the RMA. Seeing as this information is for public benefit, the Council should pay for it's collection. Biological diversity and the protection of significant sites is an important public good, and so the cost of obtaining information on potential sites should not fall onto individual resource users at time of resource consent application.

Where a full district-wide assessment is impractical, Federated Farmers has promoted an alternative approach successfully to various other district councils, in which the council pays for the evaluation of the significance of indigenous vegetation sites on an application basis. Such an approach has a number of advantages for both Council and individual resource users which was outlined at the Hearing.

In our opinion, the cost to Council of this approach is minimal and will meet Section 6c) obligations. Waikato District Council and Waitomo District Council both use this approach meaning that the Council pays for an ecological assessment of indigenous vegetation sites on application. Both of these councils are comparable to the Kaipara District Council, in that they have limited resources to carry out a full district-wide survey of sites, and minimal risk of clearance.

Relief Sought

- That the Council evaluates and maps significant indigenous vegetation and habitats through the Schedule 1 of the RMA process.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point

5 Summary of the decision specific provision or matter

Submission 174/12 on Objective 12.5.2

Summary of reasons for the appeal

The Council decision was to reject submission 174/12 on Objective 12.5.2

Federated Farmers appeals that Objective 12.5.2 is amended to only refer to areas of significant indigenous vegetation and significant habitats, and to Outstanding Natural Features and Landscapes. Currently Objective 12.5.2 does not provide certainty to resource users and will be overly onerous and subjective when applied.

There is ambiguity over the phrase “unmodified natural landforms.” There is no reference to mapped or identified landforms, so the phrase could be up to personal conjecture. Are these landforms truly unmodified by human activities, or does this include landforms in pasture, which some may view as natural or unmodified because of the lack of built form. Areas of indigenous vegetation and significant fauna also need to be defined further.

Federated Farmers considers that Objective 12.5.2 will lead to an unrealistic perception of the rural zone and lead to unnecessary and onerous restrictions on normal rural activities.

Relief Sought

- That Objective 12.5.2 is amended to refer only to areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- That Objective 12.5.2 is amended to refer only to landforms that are found to be Outstanding as identified in Variation 1 to the District Plan.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

6 Summary of the decision specific provision or matter

Submission 174/20 on Rule 12.10.1.1 (Excavation and Fill)

Summary of reasons for the appeal

The Council decision accepted in part submission 174/20 to Rule 12.10.1.1 in that volume limits were raised.

Federated Farmers submitted that the excavation and fill for the purposes of farm tracks, farm drains and works associated with building permits should be an additional permitted activity, and that volume limits would exclude normal farm activities. This would create certainty for readers of the Plan and was in line with Definition 9.48 *Excavation*, which at the time of the Hearing explicitly

excluded “normal rural activities” and listed some of these as tracks, fencelines, drain clearing, and cultivation.

However the Decision has also changed Definition 9.48 *Excavation* and no longer excludes “normal rural activities.” This now means that the aforementioned activities are now captured by Rule 12.10.1. These are activities that are expected to occur in the rural zone and that have minimal adverse effects, so should therefore be provided for in the District Plan.

Excavation and fill associated with forestry became an additional permitted activity exempt from volume and area limits, and the Decision notes that forestry can allow for communities to provide for their social and economic wellbeing. Federated Farmers appeals that excavation and fill for farming should also be permitted as farming is a significant contributor to social and economic wellbeing and level of effects will be similar or less to what is permitted for forestry. The formation and maintenance of tracks for forestry will have similar effects to farm tracking.

Relief Sought

- That excavation and fill for the purposes of farm tracks, farm drains and works associated with building permits should be an additional permitted activity.
- That Definition 9.48 *Excavation* is amended to exclude rural activities such as cultivation, fencelines and post holes, drain maintenance, dams and tracking.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

7 Summary of the decision specific provision or matter

Submission 174/22 on Rules 12.10.1.2 (Excavation and Fill for East, West and Harbours Overlays) and 12.10.1.3 (Excavation and Fill for Kai Iwi Lakes and Waterways Overlays)

Summary of reasons for the appeal

The Council decision was to accept in part submission 174/22 in that the extent of Overlay mapping had been reduced.

Federated Farmers appeals that Overlay areas that have underlying Rural Zoning should not have different rules to the remainder of the Rural Zone. 1,000m³ and disturbing only 1,000m² of area per site per 12 months is too limiting for many normal farming activities that should be expected in the Rural Zone with little or no adverse effect. Excavation and fill is being restricted in the Overlays for the purpose of protecting amenity, but this does not recognise or reasonably provide for the existing farming land uses that are occurring and the underlying rural zoning.

Excavation and fill for the purposes of maintenance of farm access tracks, farm drains and works associated with a Building Permit should be an additional permitted activity standard in the Overlays areas.

1,000m² of disturbance in an East, West or Harbours Overlay would only allow for a farm track that is 3 metres wide in order to be usable by a tractor, and only 333 metres long, which is too small for any reasonable formation or even maintenance to occur.

The Decision included forestry in a list of activities excluded from Rural Zone and Overlay excavation and fill standards, Federated Farmers appeals that farming activities have a similar or lesser adverse effect and should also be excluded from standards.

Relief Sought

- That all Overlay provisions and mapping are deleted from the Kaipara District Plan, or
- That the same excavation and fill rules for the Rural Zone apply to the Overlay areas.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

8 Summary of the decision specific provision or matter

Submission 174/24 on Assessment Criterion (vi) for Rule 12.10.1 (Excavation and Fill)

Summary of reasons for the appeal

The Council decision was to reject submission 174/24 on Criterion (vi) for Rule 12.10.1

Federated Farmers appeals that this criterion should be amended to focus on landforms that have been identified as Outstanding in Variation 1 to the District Plan.

Having effects on any landforms that are not found to be outstanding as an assessment criterion is onerous and can extend to any landform regardless of its importance or contribution to amenity. This means that resource users have no certainty as to when this criterion will be applied.

Relief Sought

- Amend Criterion (v) for Rule 12.10.1 to refer only to those landforms that are identified as Outstanding Natural Features and Landscapes.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

9 Summary of the decision specific provision or matter

Submission 174/32 on Rule 12.10.8 (Impermeable Surface)

Summary of reasons for the appeal

The Council decision was to reject submission 174/32 and retain the impermeable surface rule.

Federated Farmers appeals that Rule 12.10.8 should be deleted as it is not effects based, and appears to be an urban rule inappropriately applied to a rural zone.

The explanation of the rule states that it is intended to address effects of storm water run-off and increased flows downstream. Federated Farmers disputes this reason as storm water run-off effects can easily be internalised within a farm. Increased storm water is not going to overload a reticulated system as it might in an urban location, because farms have on-site disposal. This Rule is impractical and unnecessary for the rural zone.

The Decision states that submission 174/32 be rejected, with the reason given that the impermeable surface thresholds are the same as the Far North District Plan. The impermeable surfaces thresholds of 15% and 10% in any hectare ensure that adverse storm water effects will be minor. Greater percentages of impermeable surfaces may result in adverse effects that need to be assessed and mitigated through the resource consent process.

Federated Farmers opposes this Decision for reasons that it is not effects based, for example the area of impermeable surface could be located in the centre of a 1,000ha farm, and still require a resource consent if over 15% of the hectare in the centre was impermeable nor is there evidence of this problem in the district. The fact that Far North District Council has this rule does not immediately mean that the rule is also suitable for the Kaipara District.

Relief Sought

- That Rule 12.10.8 is deleted.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

10 Summary of the decision specific provision or matter

**Submission 174/35 on Rule 12.10.19 (Hazardous Substances)
Rule renumbered in Decision to 12.10.21**

Summary of reasons for the appeal

Federated Farmers opposes Rule 12.10.21 (Hazardous Substances) and appeals that it should be deleted as it is unnecessary duplication, and will capture on-farm storage and use of common agrichemicals that have less than minor adverse effects.

Hazardous substances are already controlled by the Hazardous Substances and New Organisms Act 1996, and Agrichemicals are managed through NZS8409 and fertilisers in particular under Fertilisers (Subsidiary Hazard) Group Standard 2006 HSR002571. Although territorial authorities have functions under Section 31 of the RMA to control the use, storage, disposal or transport of hazardous substances, Rule 12.10.21 is unnecessary duplication.

Federated Farmers has encountered similar rules in other district plans, and has identified a number of problems as it is very difficult for council staff and resource users to interpret the Table of Permitted Quantities by Zone, and not enforced. The rule is often intended for hazardous substances that are dangerous because of toxicity or explosiveness relating to Section 31(b)(ii) *Functions of Territorial Authorities* of the RMA, however it captures innocuous and everyday substances like fertiliser.

Fertilisers are caught under the rule by being classified as Toxic 6.3b. The rule will unreasonably interfere with farmers storing fertiliser on their farms, and using it for agriculture with no or de minimus risk relating to territorial authority functions. Rule 12.10.21 explicitly exempts activities such as petrol stations and trade waste from the quantity limits, yet the storage of agrichemicals and fertilisers are of similar or lesser effect and will be caught by the Rule.

Relief Sought

- That Rule 12.10.21 is deleted.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

11 Summary of the decision specific provision or matter

Submission 174/26 on Rules 12.10.2 (Indigenous Vegetation Clearance)

Summary of reasons for the appeal

The Decision was to accept in part submission 174/26.

Federated Farmers appeals that Rule 12.10.2 will not provide for reasonable use of the resource and will unnecessarily constrain activities for no ecological gain.

These rules seem to be addressing the Council's functions under Section 6(c) of the Resource Management Act, and is a proxy for Council identification of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Federated Farmers appeals that more robust criteria are needed when assessing significance, rather than just height and area provisions. This gives patches of bush automatic protection regardless of its quality or importance for biological diversity.

Robust criteria are needed for assessment of the significance of indigenous vegetation, and once a site has been identified as Significant it should be listed in a schedule. The use of a schedule will ensure that resource users have certainty around identified areas of significant indigenous

vegetation. Currently catch-all rules will be unnecessarily restricting activities that will have little or no adverse effect on areas of indigenous vegetation that demonstrate true significance.

The Decision has attempted to address Federated Farmers' concern through allowing for existing use right clearance, and clearance of indigenous vegetation less than 10 years old on previously cleared land as additional permitted activities. The indigenous vegetation subject to these additional permitted activity rules has not been identified as significant, and new clearance remains unnecessarily restricted.

Relief Sought

- That the Council identify and map areas of significant indigenous vegetation and significant habitats of indigenous fauna, so that the clearance rules only apply to significant areas.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

12 Summary of the decision specific provision or matter

Submission 174/33 on Rule 12.10.9 (Separation Distance)

Decision now also includes new Rule 12.10.12 (Separation Distance between Activities in the Rural Zone and Adjoining Zones)

Summary of reasons for the appeal

The Decision accepted in part submission 174/33 on Rule 12.10.9 and in consequence changed the Rule to "Separation Distance for Noise Sensitive Activities in the Rural Zone" and also created a new rule for "Separation Distance between Activities in the Rural Zone and Adjoining Zones."

Federated Farmers appeals that Rule 12.10.9 (Separation Distance for Noise Sensitive Activities) be deleted, as the activities listed do not relate to the new purpose of the rule regarding noise. Wastewater storage and disposal, and feed storage remain in the rule, yet these are not considered activities that create high levels of noise. Activities like hay sheds which store animal feed will be unnecessarily restricted even though no noise is created.

Federated Farmers appeals that the 300 metre setback of Rule 12.10.12 (Separation Distance between Activities in the Rural Zone and Adjoining Zones) should be reduced to 150 metres. The 300 metre setback from "noise sensitive activities" in Rule 12.10.12 (Separation Distance between Activities in the Rural Zone and Adjoining Zones) is excessive, and does not allow for reasonable use of the rural zone. Federated Farmers is concerned that this rule will perpetuate reverse sensitivity by reinforcing the idea that the rural activities listed are unacceptable to the rural zone, rather than reducing conflict. The rule does not take into account the different forms of effluent disposal that may be used and the differing levels of adverse effect arising, low pressure "drip" disposal will create very little odour and will not require a 300 metre setback.

Dairy sheds and feed storage sheds contribute to rural character and amenity, and the noise, odour or dust effects are also to be expected as part of primary production.

Relief Sought

- That Rule 12.10.9 (Separation Distance for Noise Sensitive Activities) be deleted.
- That Rule 12.10.12 (Separation Distance between Activities in the Rural Zone and Adjoining Zones) should be reduced to 150 metres.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

13 Summary of the decision specific provision or matter

Submission 174/38 on Rules 12.12.1.1 and 12.12.1.2 (Subdivision in Overlays)

Summary of reasons for the appeal

The Decision was to reject submission 174/38.

Federated Farmers appeals that the same subdivision rule should apply throughout the entire Rural Zone. Overlay Areas are unnecessary to have regard to Section 7(c) and should be deleted. The same subdivision rule should apply throughout the entire Rural Zone.

The Overlay Areas seem to be intended to address amenity values as per Section 7 (c) and the majority of these Overlay Areas derive their amenity values from human activity, mainly farming. They have also been zoned as Rural, which indicates that primary production activities occur here. These areas are not Outstanding Natural Landscapes or Features as identified in Variation 1 to the District Plan.

Federated Farmers considers that the Rural zoning, subdivision and development rules are in place to help ensure that the rural landscape remains rural in character. Therefore amenity values are already being maintained and enhanced by the Rural Zone provisions and there is no need for additional Overlay subdivision rules.

Relief Sought

- That all Overlay provisions and mapping are deleted from the Kaipara District Plan.
- That the same subdivision rules shall apply throughout the entire Rural Zone.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

14 Summary of the decision specific provision or matter

Submission 174/40 on Rule 12.13.1 (Environmental Benefit Subdivision)

Summary of reasons for the appeal

The Decision was to reject Submission 174/40 on Rule 12.13.1

Federated Farmers appeals that subdivision for Environmental Benefit purposes should be a Controlled activity. Restricted Discretionary status for subdivision for Environmental Benefit is overly onerous considering that subdivision for preservation of natural or cultural heritage features has a Controlled status.

For both an Environmental Benefit subdivision and subdivision for natural and cultural heritage, consideration must be given to the objectives and policies of Chapter 6. Both types of subdivision will provide equal benefit, and will be assessed under the same objectives and policies, and therefore should have equal activity status as Controlled. The Controlled activity status would encourage landowners to carry out subdivision for Environmental Benefit. Both rules consider minimum size requirements, balance lots, an area available for a dwelling and associated wastewater systems, and performance standards in Section 12.10 and 12.15. Federated Farmers considers that certainty of outcomes are the same, and therefore activity status for Rule 12.13.1 rules should be the same as for Rule 12.12.1.

Relief Sought

- That subdivision for the purpose of Environmental Benefit should be a Controlled activity.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

15 Summary of the decision specific provision or matter

Submission 174/43 on Definition 9.67 (Indigenous Wetland)

Summary of reasons for the appeal

The Council decision rejected submission 174/43 on Definition 9.67 Indigenous Wetland.

Changes were made to the text of Definition 9.67 although no submissions were received seeking this relief.

Federated Farmers appeals that the intent of the definition for Indigenous Wetland is ambiguous and unnecessary. The definition seems to be a way of assessing Significance to meet Section 6(c) obligations of the RMA by proxy.

The points appear to be criteria, with sites meeting the criteria being identified as Significant under Section 6(c). It is uncertain as to why such a definition is required, since there are no objectives, policies or rules that relate to Indigenous Wetlands. If a wetland has been assessed using the criteria

in Definition 9.67 and found to be an Indigenous Wetland, the status of that wetland is then ambiguous.

Appendix 24G notes that Significant Indigenous Wetlands are a subset of Indigenous Wetlands. Federated Farmers appeals that Indigenous Wetlands are either assessed and found to be significant under Section 6(c) of the RMA, or they are not significant and do not require their own assessment criteria.

Relief Sought

- That Definition 9.67 (Indigenous Wetland) is deleted.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

16 Summary of the decision specific provision or matter

Submission 174/44 on Definition 9.126 (Sites of Significance to the Department of Conservation)

Summary of reasons for the appeal

The Council decision rejected Submission 174/44 but changed the title of Definition 9.126 from *Sites of Significance to the Department of Conservation* to *Sites of Ecological Significance*.

Federated Farmers appeals that Definition 9.126 should be deleted as there is no confidence that these Sites of Ecological Significance referred to in the definition have undergone a robust process before being classified. Currently the definition still refers to sites ranked by the Department of Conservation's Significant Biological Interest Database, which has been developed outside the RMA process. As for use in the District Plan, there is no information in the plan as to where these sites are located. Resource users need to know where the sites are if it is a matter of discretion of rules in the plan.

This definition now appears to refer to the identification of sites to uphold Section 6(c) obligations in the RMA. Sites of Ecological Significance should be assessed by robust criteria, with sites needing to meet all or most of the criteria before being identified as a Site of Ecological Significance.

Neither is this information available to the public, and resource users have no idea whether sites have been identified on their land or not.

Relief Sought

- That the Definition 9.126 (Sites of Ecological Significance) is deleted.
- Make any consequential amendment as to detail or substance throughout the Plan to give effect to this appeal point.

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.

Rhea Dasent
for Federated Farmers of New Zealand

DATE: 3 November 2011

Address for service of appellant:

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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 the 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.