

BEFORE THE ENVIRONMENT COURT

ENV 2009-AKL-

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 **AUCKLAND CITY COUNCIL**

Respondent

**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

To: The Registrar
Environment Court
P O Box 7147
Wellesley Street
AUCKLAND

I, Federated Farmers of New Zealand, appeal against a decision of the Auckland City Council on the following policy statement or plan:

Auckland City District Plan: Proposed Hauraki Gulf Islands Section

I made a submission on that policy statement or plan.

I received notices of the decision referred to in this appeal on 29 April 2009.

The decision was made by Auckland City Council.

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

(see attached schedule)

The reasons for the appeal are as follows:

(see attached schedule)

I seek the following relief:

(see attached schedule)

I attach the following documents to this notice:

- (a) a copy of my submission or further submission (with a copy of the submission opposed or supported by my further 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.



P R Gardner
for Federated Farmers of New Zealand

21 July 2009

Address for service of appellant:

Richard Gardner
Senior Policy Advisor
Federated Farmers of New Zealand
Private Bag 92-066
Auckland

Telephone No.: (09) 379-0057
Fax No.: (09) 379-0782
Email: rgardner@fedfarm.org.nz
Contact person: Richard Gardner, Senior Policy Advisor

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).

Schedule of Decisions Appealed, Reasons for the Appeals and Relief Sought

Decision Ref.	Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought
Report 5 4.7.2	Clause 2.4.1	1243/6	Concept of sustainable management	Reject a submission that clause 2.4.1 be rephrase to properly reflect the purpose of the RMA.	The statement that 'The use of natural and physical resources can result in damage to the environment', together with the rest of the section is unduly negative.	Rephrase the clause to properly reflect the purpose of the Resource Management Act
Report 5 4.14.2	Clause 2.5.6 (new clause 2.5.3) Objective 3	1243/19	Natural environment	Reject a submission that sought the removal of the words "new organisms" from Objective 3.	New organisms, including genetically modified organisms (GMOs), have the potential to promote sustainable management, so their prohibition is the antithesis of the promotion of sustainable management, and therefore is contrary to the purpose of the Resource Management Act. Central government has control over land use involving GMOs under statutory and common law. That responsibility has been delegated to the Environmental Risk Management Authority (ERMA) by means of the Hazardous Substances and New Organisms Act. ERMA's position in this respect is that of a monopoly. Central government has made it clear that local government has no role to play in controlling GMOs or land use involving GMOs.	Remove the words "new organisms" from Objective 3.
Report 5 4.16.2	Clause 2.5.8 (new clause 2.5.7) Issues Objectives	1243/21	Human Environment (Other)	Reject a submission requesting the inclusion of provisions in clause 2.5.8 for those who engage in farming activity on the Hauraki Gulf Islands.	The Plan makes reference to other activities that take place on the Hauraki Gulf Islands, in particular residential activity, and so should also refer to the activity that is predominant over much of some of the islands, farming.	Include provisions in clause 2.5.8(new clause 2.5.7) for those who engage in farming activity on the Hauraki Gulf Islands.

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Report 6 4.7.2	Clause 3.3.3	1243/31	Resource Management Issues	Accept in part a submission requesting a description of "rural character" be included in the Plan, and recommend that the issue be looked into further, and possibly include a definition of rural character within the definitions section, part 14 of the Plan.	The matter has not apparently been "looked into further", and there is no mention of the submission in the Report on Part 14 of the Plan. The issue is how to maintain the large scale, rural character of the eastern end of the island. So it would be appropriate for the Plan to contain some description or a definition of "rural character"	Provide some description of, or a definition of, "rural character".
Report 7 6.0(2)	Clause 4.2	526/3 527/3 528/3 529/3 539/3 (F/S)	Activities not otherwise Specified than in the Plan	Reject the submissions that clause 4.2 be altered so that either a discretionary activity consent is required for activities not specified, or that the clause is amended to reflect an effects based approach rather than prescriptive use of activity tables.	It is ultra vires for a Plan to provide for any land use activity not otherwise specifically provided for in the Plan as a permitted, controlled, restricted discretionary or discretionary activity. Practical provision needs to be made for non-standard farming activities to occur.	Amend Clause 4.2 so that either a discretionary activity consent is required for activities not specified, or that the clause is amended to reflect an effects based approach rather than prescriptive use of activity tables.
Report 7 6.0(3)	Clause 4.3(1)	1243/38	Relationship between buildings & activities	Reject the submission to retain the provision to the effect that buildings used for an activity have the same status as the activity for which the building will be used	Federated Farmers accepts that the provision as notified did create some problems in respect of minor alterations to buildings for activities that required "high level" consent. However, the changes made have made it more difficult to construct buildings for activities that do not require consent, or that require only "low level" consent.	Return the provision to that in the notified version of the Plan, in the case of activities that do not require consent, or that require only "low level" consent.

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Report 7 6.0(4)	Clause 4.4(1)(a)	1243/39	Prohibited Activities	Reject a submission that sought the removal of the provision.	<p>New organisms, including genetically modified organisms (GMOs), have the potential to promote sustainable management, so their prohibition is the antithesis of the promotion of sustainable management, and therefore is contrary to the purpose of the Resource Management Act.</p> <p>Central government has control over land use involving GMOs under statutory and common law. That responsibility has been delegated to the Environmental Risk Management Authority (ERMA) by means of the Hazardous Substances and New Organisms Act. ERMA's position in this respect is that of a monopoly. Central government has made it clear that local government has no role to play in controlling GMOs or land use involving GMOs.</p>	Remove Clause 4.4(1)(a)
Report 8 6.0(14)	Clause 5.3.3	1243/41	Network Utility Services – requirement for undergrounding	Accept the submission in part to amend Objective 5.3.3 Policy 1 to reflect that not all types of developing require the undergrounding of services.	<p>Federated Farmers considers that the apparent requirement that underground services be provided for new development may not be practicable in some types of rural development. The change made as a result of submissions to require undergrounding only where the effects on landscape and heritage values can be adequately avoided, remedied or mitigated does not address the issue Federated Farmers is concerned with.</p> <p>Nevertheless, it is noted that the rules provisions do not seem to reflect the policy, and appear reasonable.</p>	Amend Objective 5.3.3 Policy 1 to reflect that not all types of development require the undergrounding of services.

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Report 10 6.0(1)	Part 7 as a whole	1243/52	Whether the whole of Part 7 should be removed or reworked	Reject the submission to remove the whole of Part 7 from the Plan, or rework it to take proper account private property rights.	Federated Farmers considers that the Heritage Section should reflect the fact that rural production activities take place on some of the land that has been identified as containing heritage resources, and which is privately owned. Restrictions placed on the use of that land resulting from its being so identified come at a cost to the landowners. It is considered that the whole of Part 7 should be removed from the Plan, or reworked to take proper account of the private property rights of the land owners on whose property the heritage resources are located, in particular the rights of the land owners involved to farm their land. Part 7 should recognise that people value the ability to use and develop air, land and water resources for activities including all forms of farming and horticulture.	Remove the whole of Part 7 from the Plan, or rework it to take proper account of the private property rights of the land owners on whose property the heritage resources are located, in particular the rights of the land owners involved to farm their land.
Report 10-4 6.0(1)	Clause 7.11.4	1243/59	Grazing on ecologically significant sites	Reject the submission to include provision for grazing to take place as a permitted activity on ecologically significant sites in rural locations that are in private ownership and that are farmed.	Federated Farmers considers that provision should be made for grazing to take place as a permitted activity on ecologically significant sites in rural locations that are in private ownership and that are farmed. The hearing report notes that farmers may have existing use rights to continue grazing on land that has been scheduled as a site of ecological significance. However, Federated Farmers considers that it is unsatisfactory to rely on existing use rights.	Include provision for grazing to take place as a permitted activity on ecologically significant sites in rural locations that are in private ownership and that are farmed.
Report 11 6.0(1)	Clause 8.5.1(2) & (3)	1243/66	Vegetation Removal: Grazing in riparian areas	Reject the submission that provision be made for the removal of riparian vegetation as a permitted activity.	Substantial changes to the provisions for vegetation removal in riparian areas have been made, but the exceptions provided do not take into account the practicalities of farming.	Provide for the removal of riparian vegetation as a permitted activity.

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Report 11 6.0(2)	Clause 8.3.1(2)	1243/65	Grazing in areas subject to natural hazards	Accept the submission that farming activity, particularly grazing, is normally appropriate for areas that are at risk of natural hazards.	While the submission has been accepted, and changes made to Rule 8.6.1(1) to give effect to the submission, no changes have been made to the Policy that lies behind the rule. Federated Farmers considers that changes to policy 8.3.1(2) are required to reflect the changes made to the Rule.	Provide in Policy 8.3.1(2) that farming activity, particularly grazing, is normally appropriate for areas that are at risk of natural hazards.
Report 13 6.0(6)	Part 10a Land Units: Objectives, Policies and Activity Tables:	1243/70	Activity Status of Agriculture and Forestry	Accept the submission in part that farming and forestry activity be permitted in all Landform and Rural Land Units. Reject the submission that forestry be provided for as a permitted activity in Landform 7 Land Units.	While the submission has been accepted in part and changes made to the Rule to provide for provide for pastoral farming and horticulture as a permitted activity in rural 3 (Rakino), agriculture and forestry, including pastoral farming, is not provided for as a permitted activity in several of the Landform and Rural Land Units. Federated Farmers considers that land owners have a basic right to the natural use of their land, and in the case of rural land, this natural use is for agriculture.	Provide for agriculture and forestry as permitted activities in all Landform and Rural Land Units.
Report 14-7 6.0(1)	Clause 10a.8.5 Rules - activity Table	1243/73				
Report 28 6.0(1)	Clause 10c.5.4	1243/79	Noise	Reject the submission that an exemption from the noise control be included for agricultural and horticultural activities.	Federated Farmers considers that an exception from the noise level rules should apply to the use of agricultural and horticultural vehicles or machinery, or other mobile or portable agricultural equipment, and to noise originating from animals which are under the control of humans, where the best practicable option is adopted to ensure the noise does not exceed a reasonable level. Such exemptions are normal in rural areas.	Provide an exception from the noise level rules for the use of agricultural and horticultural vehicles or machinery, other mobile or portable agricultural equipment and to noise originating from animals which are under the control of humans, where the best practicable option is adopted to ensure the noise does not exceed a reasonable level.

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Report 28 6.0(1)	Clause 10c.5.6.1	1243/80	Earthworks – permitted activities	Reject the submission that earthworks for farm tracks, fenceline clearance and drainage purposes should be provided for by way of permitted activity in all Landform and Rural Land Units.	Federated Farmers considers that earthworks for farm tracks, fenceline clearance and drainage purposes should be provided for by way of permitted activity in all Landform and Rural Land Units.	Provide for earthworks for farm tracks, fenceline clearance and drainage purposes to be permitted activities in all Landform and Rural Land Units.
Report 28 6.0(1)	Clause 10c.5.7	1243/83	Coastal, wetland and water body protection yards	Reject the submission that an exception apply for earthworks associated with farming activity within the coastal, wetland and water body protection yards.	Federated Farmers considers that an exception should be made for earthworks associated with farming activity (eg cultivation, drainage, fencing) within the coastal, wetland and water body protection yards. Such exemptions are normal in rural areas.	Provide an exception for earthworks associated with farming activity within the coastal, wetland and water body protection yards.
Report 28 6.0(1)	Tables 10c.4	560/14 (F/S)	Coastal, wetland and water body protection yards	Reject the submission that the coastal, wetland and water body protections yards in Table 10c.4 be reduced.	Federated Farmers considers that the requirements for coastal protection yards are excessive and do not adequately provide for agricultural and horticultural activities to operate.	Reduce the coastal, wetland and water body protections yards in Table 10c.4.
Report 28-1 6.0(2)	Clause 10c.5.1.1	1243/76	Controls for Conservation and Amenity: Indigenous Vegetation Protection: Permitted Activities	Accept the submission in part that the Plan provide for the removal of indigenous vegetation less than 3m in height in land units that are used for farming purposes as a permitted activity.	Substantial changes to the provisions for vegetation removal have been made, but the exceptions provided do not take into account the practicalities of farming.	Provide for the removal of indigenous vegetation less than 3m in height in land units that are used for farming purposes as a permitted activity.

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Report 28-1 6.0(2)	Clause 10c.5.1.2	1243/77	Restricted Discretionary Activities: Matters for Discretion	Accept the submission in part that "the applicant's need to obtain a practicable site for farming purposes" be included amongst the matters for discretion for restricted discretionary activities.	Despite the submission being recorded as having been accepted in part, it appears to have been rejected on the basis that the panel considers that "... the matters of discretion should not be activity specific as it may be easy to argue that many activities within the gulf islands are important and should be given particular regard". However, there are other activities specified in the matters of discretion already. Federated Farmers considers that the effects on farming, and the applicant's need to clear land for farming purposes.	Include "the applicant's need to obtain a practicable site for farming purposes" amongst the matters for discretion for restricted discretionary activities.
Report 32 6.0(18)	Part 14 Definitions - Wetland	1243/93	The definition of "wetland"	Reject the submission that the definition of wetland be amended to provide that wetland does not include land that is used for pastoral farming.	Federated Farmers considers that the definition of "wetland" is too broad, and could be interpreted in a way so as to include areas that are used for pastoral farming and horticulture.	Provide that "wetland" does not include land that is used for pastoral farming.

In each of the individual appeal points made in this Notice of Appeal, the relief sought implies and includes any consequential amendments that may be required to any and all other related elements.