

▼  
LET'S MAKE IT WORK  
WHY THE RESOURCE  
MANAGEMENT ACT  
MUST CHANGE



## RMA AND FARMING – LET'S MAKE IT WORK



### THE RESOURCE MANAGEMENT ACT (RMA) URGENTLY NEEDS AN OVERHAUL. WHEN IT COMES TO FARMING, THE ACT FAILS TO ACHIEVE ITS GOAL OF PROMOTING SUSTAINABLE RESOURCE MANAGEMENT.

As it stands, the RMA is unfair, unpredictable and overly bureaucratic.

All New Zealanders agree we have a collective responsibility to protect our country's natural resources, biodiversity, culture, and natural heritage. When it comes to bearing the cost of that protection, our collective responsibility seems to dissolve away, and ends up being shouldered entirely by landowners.

Farmers can effectively have large chunks of their privately owned land locked out of reach by the RMA – without compensation and in some cases without prior consultation. People are compensated when the government acquires actual title to their land for a public purpose, like a road. Under the RMA, title is not acquired and there is no compensation – even though land use options are severely restricted.

The RMA is a compliance nightmare for farmers. Their rights constantly change under the Act – so they can never be certain that a legitimate decision made today regarding the management of their land will still be legitimate next week, next year or in five years time. Farmers also invest huge amounts defending the rural sector against the Department of Conservation (DoC) and some environmental advocates who seem to think farms are best managed with resource consents.

As the country's biggest industry, farming is the lifeblood of New Zealand's economy – it underpins our standard of living. Yet the RMA,

and the way it is implemented by councils, has an overly heavy burden on the rural sector. It erodes the productive capacity of our farms and compromises the long-term viability of farming. Rather than promoting sustainable resource management, the Act is ignoring the critical role responsible landowners play in managing natural resources on private land.

Among frustrated farmers and most primary producers there is now strong agreement and a collective will for changes to the RMA and the way it is implemented.

This booklet summarises our suggestions for fixing the Act – without undermining its primary purpose. Farmers totally support the RMA's aim of promoting sustainable management – anyone who thinks otherwise fails to understand the rural community. It is our aim that it will lead to constructive discussion on how we can mend what is one of our most important pieces of legislation.

I urge you to read and take action on our "six pack" for change. Thousands of farmers like me will thank you.

A handwritten signature in black ink that reads "Charlie Pedersen". The signature is written in a cursive, flowing style.

**CHARLIE PEDERSEN**  
President Federated Farmers

## SIX PACK FIX

### SIX CHANGES TO HELP FIX SERIOUS PROBLEMS WITH THE RESOURCE MANAGEMENT ACT

- ▼ **COMPENSATE LANDOWNERS WHEN PROTECTING NATIONALLY IMPORTANT VALUES** IF LAND USE IS RESTRICTED
- ▼ **MANDATE CONSULTATION WITH AFFECTED LANDOWNERS**
- ▼ **REFINE DOC'S ADVOCACY ROLE – BUILD TRUST BY TURNING ADVOCACY INTO EDUCATION, INFORMATION AND CONSERVATION**
- ▼ **STREAMLINE RESOURCE CONSENTS AND THE PLAN PROCESS – MINIMISE ACTIVITIES THAT NEED CONSENTS AND CLAMP DOWN ON VEXATIOUS SUBMITTERS**
- ▼ **ENABLE LONG-TERM ECONOMIC VIABILITY** BY USING TRANSFERABLE DEVELOPMENT RIGHTS, TRADE OFFS AND CREATIVE SUBDIVISION POLICIES
- ▼ **ACKNOWLEDGE THE CHANGING NATURE OF LANDSCAPES** BY TONING DOWN THE ACT'S EMPHASIS ON PROTECTING AMENITY.

# FARMERS' EXPERIENCES OF THE RMA – KEY RESEARCH FINDINGS

## FARMERS WANT CHANGE

- 73% of farmers who have been directly affected by the RMA think it needs to change. Only 3% of farmers don't want any change.

## WHAT SHOULD CHANGE?

- Of those who think the Act should change, 79% want compensation when land use is restricted for the public benefit
- 50% of all respondents think this is a priority.

## TOP RMA HASSLES FOR FARMERS

- Having to apply for resource consent for normal farming activities
- The impact on landowners when councils are protecting nationally important values
- Environmental advocacy by groups with no community mandate, or who live outside of the region
- The time and expense of complying with the Act
- Dealing with the Department of Conservation during the RMA process. Only 23% of farmers were satisfied with DoC's involvement.

## THE RMA IS COSTING FARMING AND THE COUNTRY BIG DOLLARS

- Complying with the RMA costs farmers \$80.9 million<sup>1</sup> a year
- In addition, direct costs and lost revenue to farmers over the life of the RMA is estimated at \$242 million<sup>2</sup>, excluding compliance costs.

## HOW BIG A HASSLE IS THE ACT?

- 43% of farmers have had to apply for resource consent. The average cost of their last resource consent was \$5413
- 51% say the consent took far too long to process. Only a third of consents were processed within two months
- 24% have had to change the way their farm is managed, or were prevented from making a change to their farm, because of a resource consent decision, or district or regional plan controls
- 8% say the RMA has affected the long-term viability of their property. (Extrapolate that over the whole farming community and you get 3200 farmers affected)
- 6% say it has reduced the value of their property (Equates to 2400 farms over the whole farming community).

Independent research undertaken by Research NZ on behalf of Federated Farmers. Total of 869 responses – reflecting an overall response rate of 25%. Margin of error is maximum +/- 3.2% at 95% confidence interval.

<sup>1</sup> Estimates based on survey results and data on farming enterprises that would possibly be effected by the RMA.

<sup>2</sup> See footnote one – based on 11% of farmers who estimated that they had suffered financial loss or opportunity costs as a result of a consent or a district or regional plan.

## WIDE RANGING PROTECTION HITS RURAL LAND (SECTION 6 OF THE RMA)

### WHAT'S THE PROBLEM

Section 6 of the RMA says councils must protect things like significant indigenous vegetation, outstanding landscapes, cultural values and heritage.

But the way this section is being implemented means farmers who retain and care for natural or cultural assets on their lands are rewarded – not as good managers – but by having land use restricted without compensation. Farmers are left with a piece of land that requires a resource consent for any changes. These resource consents, however, are expensive, time consuming and often emotionally draining for individual farmers to get because of strict council rules, and precedents in planning and case law. It is also difficult to get a piece of land removed from Section 6 protection.

The result is that some or all of a farmer's land use options are restricted – without compensation. This is fundamentally unfair and goes against established principles of property law. People are compensated if the actual title to their land is acquired for a public purpose, like building a road. Under the RMA there is no compensation because the actual title to land is not handed over – even though the landowner can lose some or all rights to the land.

The way Section 6 is being implemented also removes the motivation for landowners to protect

conservation assets on their land – which goes against the aims of the RMA. This is largely due to the tendency for some councils to use case law to justify applying generic rules – a cheaper and easier approach than dealing with individual landowners or truly focusing on protecting nationally significant areas.

The Government says the problem is not the Act, but the way it is implemented by local councils. Councils say they have no choice but to protect these areas, they are bound by the Act. Farmers are the unlucky ones caught in the middle.

### CHANGE THE RMA: COMPENSATE LANDOWNERS WHEN PROTECTING NATIONALLY IMPORTANT VALUES IF LAND USE IS RESTRICTED

The RMA, and particularly Section 6, should be amended to recognise property rights, and a contestable central fund should be set up to compensate farmers for land use restrictions. The Act should also be amended so that farmers who show good stewardship by protecting conservation assets on their land are rewarded with the flexibility and freedom to farm.

## FARMER'S YARN LANDSCAPE PROTECTION UNDERMINES STEWARDSHIP ETHIC – EDWARD AITKEN

Our family has farmed on the Banks Peninsula for three generations. Over the years, we have expanded and developed into a cattle, sheep, and a shellfish farm. I am confident our existing land use is sustainable. Our farm represents our family's asset and net worth – I am charged with looking after that for my family and our future. The land is our biggest asset, I take the responsibility of looking after that asset very seriously.

We began to diversify into marine farming in 1997 as we saw it as an extension of our land based farming activities. We have a suspension-type mussel farm, which is essentially a marine

grazing area. During the resource consent processes our farming landscapes, which my family and forebears have essentially created, have been at the core of every debate.

These landscapes were developed before the RMA. Now we need resource consent to do everything. Obtaining the consent to develop our marine farm cost a six-figure sum – and we consider we are quite good at working through the process. Extending the marine farm also cost us tens of thousands of dollars.

Protecting landscapes is a consultant's dream, farmers are either excluded from the process



These changes would help balance the rights of landowners against the need to protect areas of national importance. They would also encourage councils and policy makers to be more specific about what areas are truly nationally significant, and so should be protected by the Act.

Introducing compensation and rewarding good stewardship would:

- Help redress the current situation where the RMA undermines the fundamental principal of private property rights
- Provide a mechanism for prioritising levels of significance in the eyes of the community
- Continue to provide the level of protection expected by the public. It would not reduce councils' ability to introduce rules or other methods to protect significantly important sites
- Empower and build substance into the sustainable management ethos contained in Section 5 of the RMA, without eroding the Act's aim of protecting priority national values.

## WHAT FARMERS SAY

"Councils (community/public) should be required to pay compensation when restricting reasonable use of private resources/land for public good. This would ensure that true values are attached to public's desire to gain [or] protect environment."

"Farmers are often the best suited to (be) conservers of the land, yet they are often seen as the opposite."

"Landowners are not given credit for their common sense. They do the best possible with the land and plants on it to get their maximum benefit from the land which is their major investment and heritage. They do care!"

"More consideration of the economic and social effect of controls on the farming community before imposing restrictions on traditional land use."

"Regarding areas of natural significance, the Act talks of areas of national importance. Councils have interpreted this as practically protecting any area of natural ecology, and putting costs onto private landowners. National importance needs to be redefined."

"There is a great risk of landowners being legislated [by] what they must do. There is no compensation for this. It is not right in a democratic country like New Zealand."

and find out via a notified plan that their farms are included as 'lines on maps' or are overwhelmed by barrages from groups and people imposing their views of how they want to "protect" our land. Protecting large tracts of farming landscapes with controls and resource consents is an erosion of property rights and should be compensated.

Many of these people fail to understand that making a conservation investment is a big decision. Trying to protect landscapes that have been developed and managed by farmers for generations drives farmers away from making these decisions. Farms need to be

financially viable businesses and at the foremost of all of these decisions is family sustainability and happiness.

New Zealand stands or falls on the investment farmers like me continually make to keep our small businesses prosperous. The real wealth of New Zealand is generated on farms. This money in turn leads to funding for social programmes. This is sustainability. If we do not encourage activities like ours then our standard of living as a nation will decline. For the good of all New Zealanders, the RMA and its underlying processes must be improved.

## CONSULTATION WITH AFFECTED LANDOWNERS LACKING

### WHAT'S THE PROBLEM

In many cases there is inadequate property-specific consultation in the planning process, particularly when protecting things like landscape and native vegetation.

Consequently, studies prepared for councils fail to recognise individual property boundaries and take no account of the impact on long-term viability. This lack of specificity means landowners don't have enough detail to make informed submissions – which goes against accepted legal principles for consultation. It also makes it difficult for councils to implement plans because landowners are often unaware that a site has been protected.

Information on protected sites isn't generally provided when potential purchasers do a title or land information search. Potential buyers also don't get information about proposed plans, or plans under appeal unless they go through a comprehensive search of proposed plan changes and appeals.

Problems continue despite:

- What constitutes meaningful consultation having been well defined in case law, and this information being readily available to planners
- Amendments to the RMA in 2005 that should require councils to consult more effectively before plans are notified

- Consultation requirements in the Local Government Act to determine the level of consultation needed to ensure that pre-plan consultation is effective.

### CHANGE THE RMA: MANDATE CONSULTATION WITH AFFECTED LANDOWNERS

The RMA should be amended to include mandatory consultation.

This would give landowners effective participation in the process, and would help reduce problems relating to protection of sites on private land and rules that control regular farming activities.

Alternatively, there should be a formal Memorandum of Understanding that makes it mandatory for councils to consult with landowners on Section 6 and other relevant matters. Federated Farmers has already proposed such a memorandum to Local Government New Zealand. In many cases some sort of informal understanding already exists, but this may not necessarily guarantee effective landowner consultation.

## FARMER'S YARN WEST COAST ANGUISH OVER RMA



One sunny August west coast day, farmer Don Bradley received a bombshell – a letter from Grey District Council saying that about 90 hectares, a fifth of his West Coast farm, could become a significant natural area (SNA) in the council's district plan. This was the first time he had heard about any council plans to protect the area.

The Grey District Council had previously hired an ecologist to assess areas that might be worthy of protection. The ecologist deemed part of the Bradley farm an SNA because of the claimed

## WHAT FARMERS SAY

“Before a policy is drafted the policy writers should approach those that are likely to be affected and ask them what is the best way to formulate a policy on any given subject.”

“Individuals do not get a proper chance to make submissions on all the plans that can affect their property. A more balanced view should be taken with more weighting for people who are directly involved.”

“More information needs to be provided direct to the farmers – i.e. zone maps overlaid on photos. When any zone changes are being considered farmers need to be consulted directly. Those working within councils on the development of plans should have compulsory work on farms as part of their academic training.”

“All bodies should show more patience and common sense, and treat a farm as the home of a family as they would an urban family.”

“The consultation process for district and regional plans is long winded and wears the few (individuals) who participate in the process down. I get very frustrated that as an individual it can be very time consuming for very little direct reward, and yet organisations like DOC, Fish and Game etc pay staff to put roadblocks in my (and other farmers) way. Much more consultation needs to take place before a plan is notified.”



presence of a fernbird. Mr Bradley, who has owned the farm for 35 years, has never seen this bird on his farm and says the ecologist spent only eight minutes on his property.

According to Grey District Mayor Tony Kokshoorn, 56 blocks had been identified as potential SNAs in the district. On the farm next to the Bradleys', 80 percent of the land was identified as a potential SNA. If part of the Bradley farm did become a SNA, it could not be developed without resource consent – the land would have to remain in its current state.

After a series of public spats and some significant public pressure, a breakthrough came for the Bradleys – the significant natural area identified on their property was unexpectedly withdrawn. This RMA process caused a lot of anguish for the Bradleys. They are just one of the thousands of farming families that have been caught up in the anguish caused by a lack of pre-plan consultation with individual landowners – particularly where councils are required to identify and protect important vegetation and landscapes on thousands of hectares of private land.

## DOC'S ADVOCACY ROLE TOO NARROW AND UNDERMINING FARMERS TRUST

### WHAT'S THE PROBLEM

The Department of Conservation (DoC) has an extremely important role to play in protecting New Zealand's natural and cultural heritage. Unfortunately, DoC has been given conflicting roles that undermine its ability to do this vital work.

DoC has both an advisory role under the RMA and a legislated advocacy role under the Conservation Act.

In its advisory role under the RMA, DoC gathers conservation information from landowners and gives it to councils, who use it to develop proposed regional and district plans. But DoC, in its advocacy role under the Conservation Act, often appeals these plans.

This advocacy role seriously undermines any incentive landowners have to work with DoC to protect conservation sites on their land. Landowners who voluntarily participate in surveys, and spend time and money working with DoC field staff are often rewarded with aggressive advocacy from another part of DoC. The end result of this advocacy can be to lose some or all rights to use their land.

The problem has been made worse by DoC and the Act in general focussing on a single activity, rather than looking at the way a farmer manages

conservation values across the entire farm or how it is proposed to do so in a district or region.

### CHANGE THE RMA: REFINE DOC'S ADVOCACY ROLE AND BUILD TRUST BY TURNING ADVOCACY INTO EDUCATION, INFORMATION AND CONSERVATION

DoC's role in relation to private land should be restricted to providing advice on managing and protecting conservation values through partnerships with councils and landowners.

DoC should continue to provide information, where this is held, to regional and district councils to help them make judgements about conservation issues when drafting a plan or making decisions on resource consents. The Conservation Act should be amended to remove DoC's advocacy role, and associated funding for advocacy.

Instead, where the Crown is required to make a submission on a plan, there should be just

## FARMER'S YARN NO WINNERS IN DOC'S APPEAL OF A RESOURCE CONSENT

In a recent Environment Court case, a well respected Wairoa farming family took on the Department of Conservation in a case that highlights the need to refocus DoC's role in the RMA.

The Bayly Trust was given a resource consent to clear 260 hectares of kanuka scrub on Waikatea Station, less than an hour's drive from Gisborne.

In its role as an advocate in the RMA (legislated in the Conservation Act) DoC appealed the consent, arguing that the vegetation to be cleared was nationally significant. This appeal gave no

consideration to the conservation ethic of the Baylys – they were offering to protect up to 800 hectares of scrub as a trade off. Bayly Trust lawyer John Bunbury says the clearance of regenerating kanuka scrub has been a normal farming activity on hill country stations in the Wairoa/Gisborne region for 100 years. Kanuka is not a threatened species, and regeneration of kanuka on farmland is a relatively common feature of the New Zealand rural landscape.

Federated Farmers Gisborne/Wairoa president Jean Martin says. "The Baylys are true conservationists. Some people believe the land they have set aside for regeneration may be



one submission that is undertaken by a number of central government agencies, including DoC. This unified approach was envisaged in amendments to the Act in 2005. The coordination, consultation and sheer effort needed to produce one Crown submission would help prioritise and limit central government involvement in plans to matters of true national importance.

The Conservation Act and Resource Management Act should also be amended to introduce the concept of “net conservation benefit” – so the aim would be for no net reduction in conservation values on a property, district or region. Looking at the way a farmer manages conservation assets right across the farm – rather than just focusing on a single activity. This would encourage constructive partnerships between crown agencies, councils and landowners, and would encourage sustainable growth.

## WHAT FARMERS SAY

“DoC’s current powers are too wide ranging, these need substantial modification. DoC’s right to appeal council-approved resource consents must be stopped, especially where it has provided information and advice to the regional or district council in relation to an application.”

“In recent times DoC’s ability to force change through the court process and its budget far outweighs what a farmer or a group has the ability to fight.”

“The Department of Conservation has too much power. They shouldn’t be able to appeal decisions made by councils. There seems to be plenty of money for appeals, but none when it comes to compensation.”

“As a farming group we spent over \$200,000 supporting the district council in the Environment Court defending an appeal by DoC against the District Plan, there is nothing sustainable about that”

“There is definite hostility between DoC and us at present.”

over generous. But it wasn’t enough for DoC. They wanted to go back in time and shut the whole country up. An attitude like that will only antagonise farmers. DoC has seriously damaged its relationships with farmers over this case. DoC thinks kanuka is of national importance but farming is not.”

The outcome of the Environment Court case confirmed the decision of the local district council. The Baylys were given permission to clear the vegetation and their proposal to protect a further 800 hectares was accepted. DoC’s narrowly focussed approach to advocacy in the RMA was also called into question by the decision.

Ultimately, it’s the landowners who are left to actively manage these areas for their conservation value when DoC has finished its taxpayer funded court battles. All the Baylys want to do is get on and manage their land and optimise the production and conservation values of the property.

Fighting this unnecessary battle against aggressive advocacy from DoC has left them far worse off, financially, emotionally and practically, redesigning farming systems to accommodate a court decision that with a little more time and some truly constructive compromise could have all been avoided.

# RMA PROCESSES COSTING LANDOWNERS TIME AND MONEY WITHOUT ENHANCING ENVIRONMENTAL OUTCOMES

## WHAT'S THE PROBLEM

The way the Act is implemented by councils means that more and more ordinary farming activities require resource consent. Councils often don't understand the implications of their rules for farming, leading to perverse outcomes and virtual "farming by consent". At times councils take extreme positions on new land use activities in response to public pressure to retain "ideal" rural landscapes. The use of Section 32 of the Act, which examines costs, benefits and alternatives offered, is often superficial and subjective.

Inexperienced staff, and a lack of consistency among staff dealing with long applications, means consents are often processed by numerous staff members and contractors. This, together with increasing requirements to provide expert evidence to validate proposed or existing activities, is increasing costs and time delays. These delays are compounded by councils using Section 92 of the RMA, which enables them to seek further information, to avoid meeting statutory deadlines. The process of exchanging evidence at the Environment Court is becoming increasingly time consuming. Evidence is also becoming so complex that lay people can no longer participate in the process. They need to hire lawyers. The volume of evidence presented to the court hasn't strengthened decision-making but has added vastly to the cost of hearings.

While legitimate environmental groups have a role to play in the RMA process, some "groups" are just one or two individuals who can't show any clear mandate from those they claim to represent. Very often these "groups" are based outside of the community, and have little regard for the long-term outcome of their actions on the local landowner and community.

The Environmental Legal Assistance fund, administered by the Ministry for the Environment, funds groups to appeal plans that have already been through exhaustive community consultation and hearings. Some groups given funding have been working alongside DoC. Yet where groups support councils, funding is often not available because the council is viewed as the default source of funding.

**CHANGE THE RMA:  
STREAMLINE RESOURCE  
CONSENTS AND THE PLAN  
PROCESS – MINIMISE  
ACTIVITIES THAT NEED  
CONSENTS AND CLAMP  
DOWN ON VEXATIOUS  
SUBMITTERS**

## FARMER'S YARN CONSENTS COST MORE THAN THE WORK TO BE DONE

Fish and Game approached me to help clean willows out of a major salmon spawning creek that flows through my property and causes flooding in a paddock. We would share the cost. As the landowner I applied for a resource consent, only to be told that the application would cost \$2000-plus and if the application had to

be notified there could be substantial further cost. The whole job could have been completed for \$2000 so I did not go ahead. I have [an] unusable portion of paddock. Fish and Game have a declining spawning resource.

Who wins? The willows and the system.

Councils should remove the need to get a consent for low impact activities by reclassing them as “permitted”. The consent process should also be streamlined so that council officers can sign off the activity and issue the consent using a single page form and a single site visit. This would resolve many process-related problems, like requests for further information, misinterpreted communications, and confusion over site effects. Alternatively, giving some council staff greater decision-making authority would reduce delays and costs.

An independent body, such as Audit New Zealand, the office of the Ombudsmen and/or the Ministry for the Environment, should audit local authorities’ processes. While this is already done to an extent by the Ministry for the Environment, there is a need to better identify and work more closely and give greater financial and technical support to councils with problems implementing the Act. This support is needed most urgently by smaller rural councils with sparsely populated, large land areas.

Amendments to the RMA in 2005 aimed to reduce vexatious submitters by requiring objectors to make greater commitments and giving councils more power to strike out submitters. Councils now need to demonstrate stronger leadership by using their powers to protect decisions made by their community from unsubstantiated environmental claims. There should be an external review of the Environmental Legal Assistance fund covering its terms of reference, decision-making criteria on funding applications, and its effectiveness in meeting environmental management objectives. There should be a rationalisation of Central Government funding available to individuals or councils who seek RMA decisions that would erode private property rights. It would be better to provide contestable funding to smaller councils who don’t have the funding base to enable them to implement proactive incentives that involve supporting landowners in their districts to meet plan objectives.

## WHAT FARMERS SAY

“A more common sense approach is required which is less rules based (with) more education and incentives for correct actions. 90% always abide by rules and would benefit from incentives, yet councils are using rules designed to stop the extreme to the detriment of everyone else’s business production/profitability.”

“Councils have misconstrued the Act based on cause and effect. Instead of having the right to do something unless it has some deleterious effect councils say ‘we think that this might be the outcome, you prove otherwise!’ This distorted interpretation gives absolute power to the local body.”

“If people are not directly affected by a policy to be implemented, then their submissions should not carry the same weight and there should be a dollar cost related to that submission. The people implementing policy and regulations have very little practical knowledge of farming so therefore are not able to see the effect they can have on farming through the implementation of their policies.”

“The RMA is full of undefined, woolly and utopian ‘hopes’ that merely result in naive young civil servants placing their own idealistic interpretations on how (mainly landowners) should run their affairs. The RMA has created an industry of experts prepared to testify (at considerable cost) whether something can take place.”

“Standardise the process and application costs of every day consents. Some consents cost more than the work done.”

“Someone in Auckland should not be able to control what a farmer does to his land at Lake Coleridge, without putting up any money.”

“The biggest problem with the Act is not the Act itself but the way it has been used as a weapon by powerful lobby groups to push their own political agenda. These well resourced outside lobby groups have a disproportionate influence on how the Act is implemented currently. The process is confrontational, as a result the power of these outside lobby groups during negotiations needs to be curtailed, and bought in line with the time and money the local people can spend lobbying for how the Act should be interpreted.”



## PLANNING DECISIONS TAKE LITTLE ACCOUNT OF LONG TERM FARM SUSTAINABILITY

### WHAT'S THE PROBLEM

Landowners are finding the RMA a significant barrier to using subdivision to ensure long-term economic viability.

This is particularly a problem in coastal areas, areas with outstanding landscapes, and on urban fringes. On the one hand farm values, and consequently local body rates, in these areas have increased out of all proportion to the property's productive capacity. On the other hand, farm activities are increasingly being controlled by councils simply because of the farm's iconic location. Together these trends are undermining economic viability.

One way for farmers to free up capital and remain economically viable is through low impact subdivisions. But subdivision applications – for example, to sell off houses where neighbouring farms are merged or to create small subdivisions – are either declined or incur big costs and delays. Very few councils offer incentives that encourage innovative development, such as covenants and transferable development rights.

Existing solutions to the subdivision problem – which include things like allowing lost rights to be transferred to another part of the district – have value. But they are not widely accepted within the current planning framework.

### CHANGE THE RMA: ENABLE LONG-TERM ECONOMIC VIABILITY BY USING TRANSFERABLE DEVELOPMENT RIGHTS, TRADE OFFS AND CREATIVE SUBDIVISION POLICIES

District and regional plans should include flexible subdivision policies allowing for low impact subdivisions to ensure long-term economic sustainability. These policies could include allowing subdivisions where covenants are in place to prevent further subdivision, or policies that encourage councils to purchase property development rights to compensate landowners for losing the right to subdivide or intensify land use.



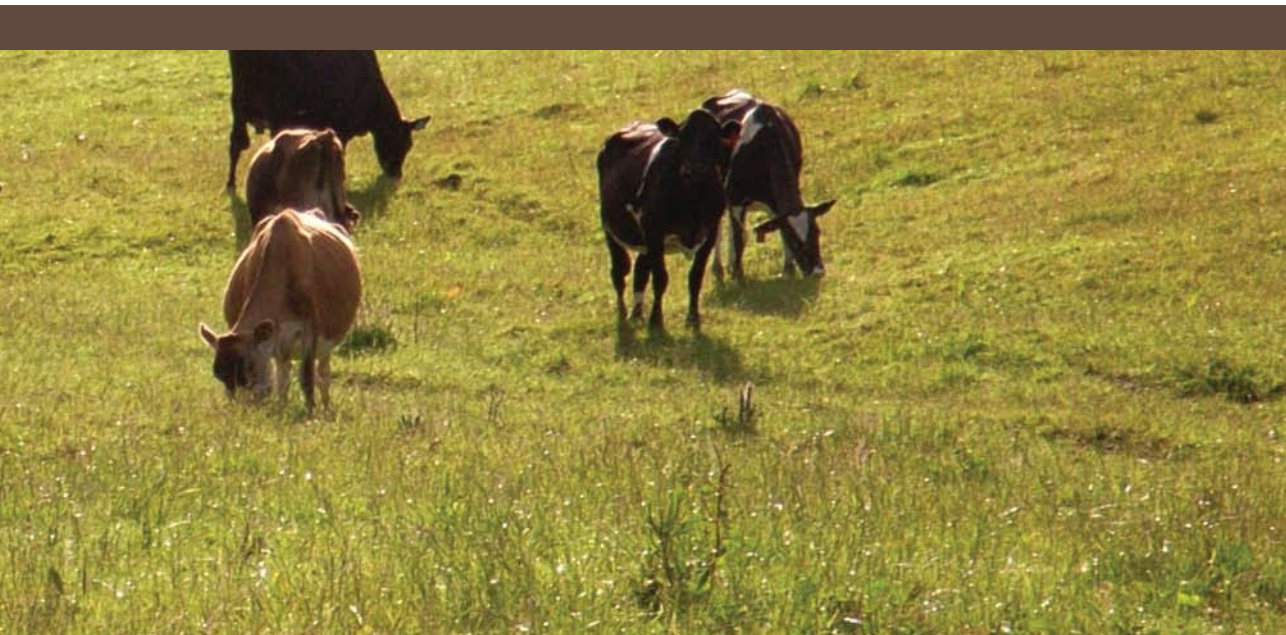
## WHAT FARMERS SAY

“The high degree of risk and uncertainty regarding the outcome of the application process should be reduced. We were lucky, our resource consent to subdivide was approved a week before the Environment Court overturned a council decision allowing sub division down to the size we were working to. A week later and it would have cost us \$10,000 more, which is significant on our economic scale”

“Local iwi had a lot of input in our discussion and we had no opportunity to respond.”

“More balance of conservation vs economic outcomes.”

“Take a holistic approach to farming and especially when the owner is the occupier/farmer.”



# LAND USE RESTRICTED AS PUBLIC AIMS TO “PROTECT” RURAL LANDSCAPES

## WHAT'S THE PROBLEM

The RMA's protection of amenity values like views is ill-defined, unfair and interferes with legitimate activities on private land. It may also discourage farmers from allowing public access over their land.

In a recent Environment Court decision (EnvC 66/04) in Queenstown, consent for a subdivision was declined because of its impact on views from a well-established private walking track. The decision could mean that resource consents can be declined for any area of farmland visible from a public place, because of the impact on public views or public enjoyment of the area.

This is unfair because it takes no account of property rights or economic viability. It will also discourage farmers from allowing public access over their farms, because of the risk that these access areas could be considered “public places” and the views around them protected.

## CHANGE THE RMA: ACKNOWLEDGE THE CHANGING NATURE OF LANDSCAPES BY TONING DOWN THE ACT'S EMPHASIS ON PROTECTING AMENITY

Farmers whose land is highly visible to the public, or who allow public access over their land, should not be required to preserve it purely for the enjoyment of the public.

The Act should be amended to recognise that farming landscapes change, and to reduce the emphasis on amenity values. The part of section 7 that requires councils to maintain or enhance amenity values should be removed or toned down.

The Act needs to recognise that farms are not natural landscapes - they were created by farmers over the last century. They are created as part of developing and changing productive businesses, not to look pretty.

Farms, just like urban businesses, need to innovate and change, otherwise they will stagnate and risk becoming economically unviable. The Act needs to acknowledge this explicitly.

Reducing the emphasis on amenity values would also have the benefit of focusing the attention of landscape protection in general back onto areas that are considered to be of true outstanding national value, as required by section 6.

## WHAT FARMERS SAY

“The Act needs to be interpreted simply and not as a means to stopping everything. Outside influences are just too great.”

## FARMER'S YARN PUBLIC ACCESS AND VIEWS UNDERMINES FUTURE LAND USE?

For 17 years the Wilsons allowed public access across private land on their farm, Dublin Downs, in the Queenstown Lakes District. Their permission gave the public access to another route across private land to an otherwise difficult to access and prominent landmark with wonderful views over the lakes. The track has been maintained at the Wilson's expense and at least 30,000 trees have been planted to enhance the amenity of the area.

The Queenstown District Council's district plan emphasised views from public places, but also from “other places which are frequented by

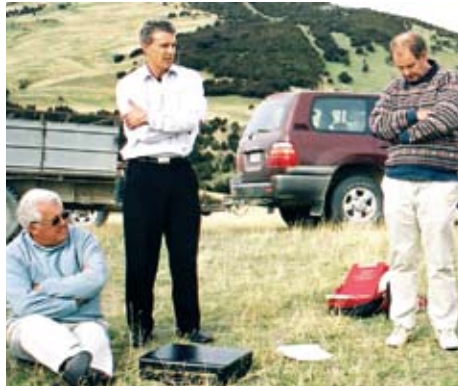
members of the public generally”. In effect, this means that if landowners allow the public onto their property, their land is likely to become regarded as a public place under Resource Management Act (RMA). The fact that the public may see a proposed dwelling from private land, was a key reason for the Environment Court declining a low impact subdivision on the Wilsons property.

The consent application and the subsequent Environment Court case cost the Wilsons in excess of \$100,000, hundreds of hours and bucket loads of emotional quota. As a result of the decision to

“To make the legislation more defined and specific to those parties directly effected by any change in land use, not to include those who are [in] no way effected.”

“Wider public have too much say given their lack of financial contribution to the process. The farmer wears all financial considerations and then stands the chance of losing income earning options.”

“Communities must have more rights and be able to assert more control. The RMA needs modifications to reflect this. The greater good is not always in the best interests of a small district community, which can at the moment be made to suffer through costly appeals and still lose the battle.”



decline subdivision consent, the walking track has been closed to the public. This decision was not sour grapes; it was the only rational way the Wilsons had of protecting their future. Thousands of other landowners agree.

Similar situations have occurred in other parts of the district, where landowners agreed to access easements over private land, only to be later used by the court as a reason to decline resource consent.

John Aspinall, spokesperson for the Lakes Landcare Group, says the recreational public,

Queenstown District Council and the Environment Court really need to get their heads around this issue if they want to continue to promote public access. “Landowners will be very reluctant to grant public access, or negotiate access easements, if this leads to their land being regarded as a public place and a reason for declining subsequent RMA consent applications.”

## HOW THE RESOURCE MANAGEMENT ACT WORKS

THE RMA'S PURPOSE IS TO PROMOTE SUSTAINABLE MANAGEMENT. IT ATTEMPTS TO ALLOW PEOPLE TO GO ABOUT THEIR NORMAL BUSINESS, WHILE ENSURING THAT OUR NATURAL RESOURCES WILL BE AVAILABLE FOR THE FUTURE BY AVOIDING AND MANAGING NEGATIVE EFFECTS ON THE ENVIRONMENT.

Under the RMA, district councils must draw up a **district plan** to manage the effects of land use and to protect nationally important things such as landscapes, indigenous vegetation and heritage. When the effects of an activity exceed those allowed for in the plan a **resource consent** is required.

Regional councils may draw up a **regional plan** that works in a similar way, but manages the use of water in lakes, rivers and the coastline, and the impact of land use on water and air quality.

Activities are given a particular status in a district or regional plan:

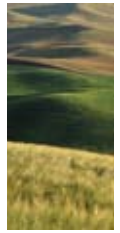
- **Permitted activity**  
Does not require a resource consent
- **Controlled activity**  
Requires resource consent. Councils have to grant resource consent, but can impose conditions.
- **Restricted discretionary activity**  
Requires resource consent. Applications are assessed by councils on a restricted set of criteria which must be listed in the relevant plan. (e.g. a proposed new house might be assessed for its height, colour, materials and impact on surrounding landscape.) Council may decline or accept with or without conditions.
- **Discretionary activity**  
Requires resource consent. Applications can be turned down although most (90 – 95%) are granted with conditions. Applications may be publicly notified and a hearing may be required
- **Non complying activity**  
Requires resource consent. Councils must decline consent where the effects are more than minor, or the application is inconsistent with the objectives and policies of the plan. Generally, applications will be notified and if the consent is granted very stringent conditions are imposed
- **Prohibited activity**  
Not permitted and no one may apply for a resource consent under any circumstances.

The Act provides some protection for an activity that was lawfully established. This protection allows an activity to continue irrespective of any controls in a district plan. However all activities must comply with any rules in a regional plan within six months of it being finalised. The existing use protection for farmers is problematic because some farming activities only take place intermittently. This has led to a gradual undermining of what might be accepted as “existing use”. New rules are therefore capturing legitimate, established farming practices, or restricting further intensification of farm operations.

## SIX PACK FIX

**SIX CHANGES TO HELP FIX SERIOUS PROBLEMS WITH THE RESOURCE MANAGEMENT ACT**

- ▼ **COMPENSATE LANDOWNERS WHEN PROTECTING NATIONALLY IMPORTANT VALUES** IF LAND USE IS RESTRICTED
- ▼ **MANDATE CONSULTATION WITH AFFECTED LANDOWNERS**
- ▼ **REFINE DOC'S ADVOCACY ROLE – BUILD TRUST BY TURNING ADVOCACY INTO EDUCATION, INFORMATION AND CONSERVATION**
- ▼ **STREAMLINE RESOURCE CONSENTS AND THE PLAN PROCESS – MINIMISE ACTIVITIES THAT NEED CONSENTS AND CLAMP DOWN ON VEXATIOUS SUBMITTERS**
- ▼ **ENABLE LONG-TERM ECONOMIC VIABILITY** BY USING TRANSFERABLE DEVELOPMENT RIGHTS, TRADE OFFS AND CREATIVE SUBDIVISION POLICIES
- ▼ **ACKNOWLEDGE THE CHANGING NATURE OF LANDSCAPES** BY TONING DOWN THE ACT'S EMPHASIS ON PROTECTING AMENITY.



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