

## Attachment

# Proposed Legislative Amendments to Implement Federated Farmers' "Six-Pack"



### COMPENSATE LANDOWNERS WHEN PROTECTING NATIONALLY IMPORTANT VALUES IF LAND USE IS RESTRICTED

Federated Farmers considers that an addition to readdress the balance in the Section 6 "matters of national importance" would go a long way towards addressing problems brought about by the lack of recognition of property rights in the RMA and the lack of recognition of the good land stewardship that is shown by most farmers.

It is proposed that section 6(ea) be added to the RMA as follows:

#### **6 Matters of national importance**

...

(ea) *The relationship between the owners of land and their land, in particular the property rights of the owners of land in their land.*

It is suggested that the compensation issue be addressed by amending RMA section 85 (which states that no compensation is payable) to state that compensation is payable in certain circumstances according to the principles that are behind the compensation provisions for esplanade strips (RMA s 237H).

#### **85 Compensation not payable in respect of controls on land**

...

(8) *Where a provision or proposed provision is included in a plan or a proposed plan to recognise and provide for the matters of national importance described in sections 6(a), 6(b), 6(c), 6(d), 6(e) and 6(f) or to have particular regard to the other matters described in sections 7(c), 7(d) and 7(f), an owner of an estate or interest in land (including a leasehold estate or interest) that is subject to the provision or proposed provision in a plan or a proposed plan may apply at any time to the local authority to have compensation paid for the land that is subject to the provision or proposed provision.*

(9) *If the territorial authority and the registered proprietor cannot agree as to the compensation, including any additional survey costs, payable under subsection (8), the compensation payable shall be determined by a registered valuer agreed on by the parties (or, failing agreement,*

*nominated by the President of the New Zealand Institute of Valuers), who shall provide a copy of the determination to all parties.*

(10) *The territorial authority or the registered proprietor who is dissatisfied with the determination under subsection (9) may, within 20 working days after service of the determination, object to the determination to the registered valuer in writing, stating the grounds of objection.*

(11) *Sections 34, 35, 36, and 38 of the Rating Valuations Act 1998 (and any regulations made under that Act relating to reviews and objections), as far as they are applicable and with all necessary modifications, are to apply to the objection as if—*

(a) *The registered valuer had been appointed by a territorial authority to review the objection; and*

(b) *The review had been made under section 34 of that Act; and*

(c) *The references to a territorial authority in sections 34(4), 35, and 36 of that Act were references to the registered valuer.*

(12) *For the purposes of this section the compensation shall be assessed as if the provision or proposed provision involved the taking of an interest in the land.*

(13) *For the purposes of this section the amount on which the compensation payable is based shall be equal to the value of the interest in land said to be created by the provision or proposed provision and any additional survey costs incurred by reason of the interest created, except that no account shall be taken of any increase in the value of the land caused or likely to be caused by the provision or proposed provision.*

(14) *The compensation payable shall be a sum of money that is the amount calculated in subsection (13), or a sum of money that is payable annually based on the amount calculated in subsection (13), or any combination of both an amount that is less than the amount calculated in subsection (13) and a sum of money that is payable annually based on the balance of that amount.*

- (15) *Where the compensation payable in subsection (14) consists in whole or in part of a sum of money that is payable annually, the determination shall include provision for that sum of money to be reviewed no less often than one every ten years.*
- (16) *Once paid, no compensation becomes refundable, including in circumstances where a provision or proposed provision in a plan or proposed plan is removed.*

#### MANDATE CONSULTATION WITH AFFECTED LANDOWNERS

We note that mandatory consultation with some sectors is already provided for in clause 3 of schedule 1 of the RMA. We suggest that land owners could be added to the provision as follows:

#### 3 Consultation

- (1) *During the preparation of a proposed policy statement or plan, the local authority concerned shall consult-*

...

*(ca) Land owners who may be so affected; and*

#### REFINE DOC'S ADVOCACY ROLE AND BUILD TRUSTBY TURNING ADVOCACY INTO EDUCATION, INFORMATION AND CONSERVATION

It is suggested that Federated Farmers' concerns with the Department of Conservation's role in resource management matters could be addressed by the adoption of a "whole of government" approach to the making of submissions by government agencies under the RMA.

It is noted that the suggestions include an amendment to the resource consent submission process, although that is not part of the "six-pack" package.

Provision for submissions is made in RMA section 96 (submissions on resource consents), clause 6 of schedule 1 (submissions on proposed policy statements and plans) and clause 8 (further submissions on proposed policy statements and plans).

It is suggested that section 96 could be amended:

#### 96 Making of submissions

- (1) *The following persons may make submissions to a consent authority about an application for a resource consent:*

*(a) if the application is publicly notified in accordance with section 93 or section 94C, any person including the Crown, but not including individual ministers or groups of ministers or central government agencies or groups of central government agencies unless such a person is otherwise served notice of the application:*

...

And Schedule 1 amended:

#### 6 Making submissions

Any person, including the local authority in its own area and the Crown, but not including individual ministers or groups of ministers or central government agencies or groups of central government agencies, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under clause 5.

#### 8 Further submissions

Any person, including the local authority in its own area and the Crown, but not including individual ministers or groups of ministers or central government agencies or groups of central government agencies, may, in the prescribed form, make a further submission to the relevant local authority, but only in support of or in opposition to those submissions made under clause 6 on a proposed policy statement or plan.

It is noted that the concept of "net conservation benefit" is being developed through the Environment Court as "environmental compensation". As things stand at present, environmental compensation is a relevant consideration under RMA section 104(1)(c) ("any other matter the consent authority considers relevant").

Federated Farmers' suggested amendments are to include definitions of "conservation" and "environmental compensation", and provide for environmental compensation as a separate consideration under RMA section 104, as follows:

#### 2 Interpretation

...

*Conservation has the same meaning as in the Conservation Act 1987:*

...

*Environmental compensation is the exchange of rights to subdivision, use or development for off-site works or service or public ownership or covenants which are linked to a proposed activity:*

#### 104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to-*

...

*(ba) The net benefit to conservation that arises from any environmental compensation that forms part of the application; and*

...

It is noted that the Department of Conservation's advocacy function is provided by section 6(b) of the Conservation Act. Federated Farmers suggests an amendment to the Conservation Act as follows would

address its concerns in respect of the Department's advocacy role:

## 6 Functions of Department

The functions of the Department are to administer this Act and the enactments specified in Schedule 1 to this Act, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—

...

- (b) *To advocate the conservation of natural and historic resources generally but not in relation to any particular natural and historic resources:*

The other objectives sought by the Federation in relation to DoC's functions are already provided for in the Conservation Act, so the matter is more one of persuading the Department and the government to allocate their resources appropriately than making legislative change.

### STREAMLINE RESOURCE CONSENTS AND THE PLAN PROCESS – MINIMISE ACTIVITIES THAT NEED CONSENTS AND CLAMP DOWN ON VEXATIOUS SUBMITTERS

The changes sought to the RMA under this heading fall into two categories, one concerning the plan development process and the descriptions of the types of activity that should be required to go through the consenting process, and the other concerning the plan development and consenting processes themselves.

#### *Minimise activities that need consents*

It is noted that most of the changes sought in this respect are to do with matters of implementation, rather than involving amendment to the RMA.

Nevertheless, Federated Farmers considers that legislative change would reduce the opportunity for some of these deficiencies in implementation to arise. One issue is that there is no effective restriction on local authorities classifying activities in a plan more restrictively than is necessary in order to achieve the objectives and policies in the plan. It is also considered that clarification of the ability to set conditions by way of reference to material incorporated into a plan is required.

Federated Farmers' suggested amendments to the RMA to rectify these deficiencies follow. The suggested new section 77A(4) is intended to emphasise that conditions on permitted activity rules can be derived from material incorporated into a plan by reference. The suggested new section 77E is intended to force local authorities into assigning no higher level of control over activities than is necessary, with section 77E(6) intended to emphasise that not every land use activity need be specified in a plan, and that "as of right" land use activities are provided for in the RMA.

## 77A Power to include rules in plans

...

- (4) *The power to specify standards, terms or conditions in a plan or proposed plan, including on an activity described in the plan or proposed plan as a permitted activity, includes the power to require compliance with any standard, term or condition that may be derived from any material incorporated by reference into the plan or proposed plan.*

...

## 77E Restrictions on types of activities

- (1) *A local authority may not describe an activity as a prohibited activity if it has sufficient information about the effects of the activity to enable it to describe the activity as another type of activity.*
- (2) *A local authority may not describe an activity as a non-complying activity if it has sufficient information about the effects of the activity to enable it to establish that the adverse effects of the activity on the environment will be minor or the activity is not contrary to the objectives and policies of the plan or proposed plan.*
- (3) *A local authority may not describe an activity as a discretionary activity if it has sufficient information about the effects of the activity to enable it to establish that it is able to restrict its discretion to particular matters.*
- (4) *A local authority may not describe an activity as a restricted discretionary activity if it has sufficient information about the effects of the activity to enable it to establish that it need not control that activity (in the case of an activity that is a use of land within the meaning of section 9) or that it can control that activity by describing it as a controlled activity or a permitted activity.*
- (5) *A local authority may not describe an activity as a controlled activity if it has sufficient information about the effects of the activity to enable it to establish that it need not control that activity (in the case of an activity that is a use of land within the meaning of section 9) or that it can control that activity by describing it as a permitted activity and specifying the standards, terms or conditions, if any, that the activity must comply with in the plan or proposed plan.*
- (6) *For the avoidance of doubt a local authority may describe an activity that is a use of land within the meaning of section 9 as a permitted activity and if no standards, terms or conditions are specified for that activity no provisions in the plan or proposed plan apply to that activity.*

*Clamp down on vexatious submitters*

It is noted that a number of other organisations are seeking to reduce the involvement of “any persons” in RMA processes by reintroducing “standing”, which requires persons to have some direct connection with the process. Federated Farmers is mindful, however, that various courts have found that there is an ethos of public participation that runs right through the RMA, and accordingly considers that it may not publicly acceptable to reduce the right of participation at council level, at least not in the short term.

Federated Farmers considers that restricting the right of appeal to the Environment Court to those submitters directly affected or those who represent a relevant aspect of the public interest, and reintroducing the ability of Environment Court to order security for costs would go some way in addressing its concerns about participation in RMA processes by vexatious submitters. The suggested changes to the RMA are to sections 120 and 284A as follows:

**120 Right to appeal**

- (1) *Any one or more of the following persons may appeal to the Environment Court in accordance with section 121 against the whole or any part of a decision of a consent authority, except a decision of the Minister of Conservation under section 119, on an application for a resource consent, or an application for a change of consent conditions, or on a review of consent conditions:*
  - (a) *The applicant or consent holder:*
  - (b) *Any person who made a submission on the application or review of consent conditions and:*
    - (i) *who has an interest in the matter that is greater than the public generally; or*
    - (ii) *who is a person representing a relevant aspect of the public interest.*

...

**284A Security for costs**

- ~~(1) The Environment Court does not have the power to order a party to give security for costs.~~
- ~~(2) Subsection (1) overrides any other enactment relating to security for costs.~~

And to Clause 14 of Schedule 1 of the RMA:

**14 Appeals to Environment Court**

- (1) *A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—*
  - (a) *a provision included in the proposed policy statement or plan; or*

- (b) *a provision that the decision on submissions proposes to include in the policy statement or plan; or*
- (c) *a matter excluded from the proposed policy statement or plan; or*
- (d) *a provision that the decision on submissions proposes to exclude from the policy statement or plan.*

- (2) *However, a person may appeal under subclause (1) only if the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan and the person:*

- (i) *has an interest in the matter that is greater than the public generally; or*
- (ii) *is a person representing a relevant aspect of the public interest.*

- (3) *The following persons may appeal to the Environment Court against any aspect of a requiring authority's or heritage protection authority's decision:*

- (a) *any person who made a submission on the requirement that referred to that matter and:*
  - (i) *who has an interest in the matter that is greater than the public generally; or*
  - (ii) *who is a person representing a relevant aspect of the public interest.*

...

...

**ENABLE LONG-TERM ECONOMIC VIABILITY BY USING TRANSFERABLE DEVELOPMENT RIGHTS, TRADE OFFS AND CREATIVE SUBDIVISION POLICIES**

The changes sought are to do with matters of implementation, rather than involving amendment to the RMA.

However, it is considered that the amendments suggested above concerning “environmental compensation” and “net conservation benefit” may go some way towards encouraging councils to be innovative in their policies.

**ACKNOWLEDGE THE CHANGING NATURE OF LANDSCAPES BY TONING DOWN THE ACT'S EMPHASIS ON PROTECTING AMENITY**

Federated Farmers considers that the changes proposed to compensate land owners when land use is restricted would go a long way towards achieving its objectives under this heading.

Nevertheless, it is acknowledged that a potential difficulty with changing the “amenity values” provision is that it sometimes works in favour of farming interests, for example “rural character” is an amenity value that clearly recognises farming as a legitimate rural activity. Another difficulty is that “naturalness” is considered by the experts to occur across a continuum, so even a cityscape has a certain degree of natural character.

It is considered that the removal of section 7(c) may disadvantage farmers as much as advantage them. It is suggested that that part of the “amenity value” provision that seems to be biased towards “protecting” existing amenity be removed, in the expectation that the authorities will come to recognise the dynamic nature of amenity in a rural context. Thus the proposed change is as follows:

## **7 Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

...

(c) *The maintenance and enhancement of a  
Amenity values:*

...