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Submission on proposal for national policy statement or
New Zealand coastal policy statement

To:

The Chairman
Board of Inquiry

Name of Submitter:

Federated Farmers of New Zealand

This is a submission on the following proposed New Zealand coastal policy statement (the **Proposal**):

Proposed New Zealand Coastal Policy Statement on 2008.

Background

Federated Farmers of New Zealand welcomes the opportunity to make a submission to the Board of Inquiry on the Proposed New Zealand Coastal Policy Statement 2008 (“the Proposal”).

Federated Farmers of New Zealand is a primary sector organisation that represents the majority of the country’s farming businesses. The Federation has a long and proud history of representing the interests of New Zealand’s farmers, farming communities, other primary producers and agricultural exporters.

The Federation as a whole aims to add value to its members’ farming businesses. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members’ families and their staff have access to services essential to the needs of the rural community; and
- Our members adopt responsible management and environmental practices.

The total agricultural sector is even more important to the economy than it was fifteen years ago. Its contribution to the New Zealand economy has risen from around 14.2 percent of GDP in 1986/87 to around 17 percent today (including downstream processing). Some authorities consider agriculture’s current contribution to the New Zealand economy to be about 20 percent of GDP.

Federated Farmers considers that the sustainable management of resources is fundamental to the philosophy of New Zealand farmers – their businesses and lifestyles require that the country’s natural and physical resources be sustained for the current and future generations. The value of each farm business is largely dependant on its sustainable management. As

such, this aligns with the purpose of the Resource Management Act, and accordingly the Federation supports the philosophy behind the Act.

However, since the enactment of the Resource Management Act, both the Federation's members and the Federation itself have struggled with costly and time consuming difficulties that have arisen as a result of its implementation.

The Federation's members and staff have been actively involved in the development of every policy and planning document at district regional and national level under the Resource Management Act. The Federation considers that it has an excellent understanding of implementation and other problems that have become associated with the Act.

The Federation estimates that collectively it spends around \$900,000 annually representing farming interests in planning processes. In addition a further \$6 million annually of in-kind farmer input is estimated to have been made to this same end.

In general terms, the Federation considers that there are a number of fundamental flaws in the Resource Management Act. In general terms, these include:

- Lack of accountability: There is no requirement for the community as a whole to pay for the private cost of planning provisions which are implemented for the benefit of the public generally. For example, when land use controls are imposed with regard to Resource Management Act section 6 matters to address "matters of national importance", there is no requirement under the Act for the council or the wider community to carry any of the costs incurred in the protection of those values. The cost fall on the private individual.
- Shortcomings in Section 32: The section 32 analysis does not provide any requirement that the private, or individual, cost of policies or methods which are implemented for the benefit of the public generally be recognised.
- Compliance Costs: The costs and time taken up in obtaining resource consents for minor matters (for example building a hay barn), are not properly taken into account when plan provisions are prepared.
- Poor Plan Development: The poor quality of plan development that takes place in most local authorities is leading to poor resource consent processes, and decisions that must then be politically driven. It is considered that this is brought about, at least partially, through insufficient consultation with affected parties, especially those landowners directly affected by controls to protect matters of national importance.
- Lack of proper regard to local community views: The local community is best placed to determine resource management issues for their area. However, the local community views carry no greater weight in outcomes than any submitter no matter how remote or unqualified that person may be.

To address these and other issues, the Federation has developed a "six-pack" of changes that would make a real difference for farmers:

- There needs to be an economic or property imperative in section 6 of the Act: Changes must be made to section 6 and the way it is implemented so that good stewardship is rewarded with flexibility and freedom to farm;
- A real effort needs to be made by persons exercising functions and powers under the Act to understand what motivates on farm decision making before they undertake the writing of policies and rules;

- There needs to be a “net conservation benefit” concept developed to enable a more holistic approach to on farm conservation management;
- Plans must encourage responsible farming by minimising those activities that require consent, and where consent is needed, the process streamlined by providing a “one stop shop” for such consents;
- Encourage and enable economically sustainable farming into the future with flexible subdivision policies;
- The requirement to protect amenity values in section 7 of the Act needs to be toned down or removed. Farmers who provide the public with the use of their land, including areas that are highly visible from public places, should not be required to preserve their land in a particular state purely for public amenity.

General Comments

Federated Farmers generally supports there being a New Zealand Coastal Policy Statement, and as such accepts the Proposal.

However, Federated Farmers considers that the Proposal, if issued in its present form, will exacerbate many of the concerns that arise from the flaws, as discussed in the Background above, that the Federation considers exist in the Resource Management Act. Nevertheless, Federated Farmers is pleased to see that some of the flaws in the Act that apply generally have been addressed by the Minister in preparing the Proposal, and that some of the changes the Federation would like to see made to address those flaws generally have been adopted by the Proposal.

Federated Farmers notes that the Proposal has ten objectives and fifty seven policies. It is considered that in some cases the objectives do no more than restate what the Resource Management Act states are matters of national importance, so offer little by way of policy direction. While many of the policies in the Proposal appear to have merit, it is not possible to assess them properly in the absence of any guidance as to which objective or objectives each relates to. Nevertheless, as they stand, Federated Farmers has concerns with some of the policies proposed. Federated Farmer’s principal concern with these policies is that they take insufficient account of the fact that much of the coastal environment, including parts of the coastal marine area, is in private ownership. The Federation considers that the Proposal pays insufficient attention to private property rights, and the legitimate expectations of the owners of private land in coastal areas. Federated Farmers is strongly opposed to any diminution of property rights without proper compensation being paid.

Compensation

In respect of the issue of compensation, it is notable that the former Parliamentary Commissioner for the Environment, Dr Morgan Williams, has acknowledged that the issue of compensation for those who cede their property rights is not well handled by the Resource Management Act¹. Federated Farmers considers that this flaw is exemplified by the current Coastal Policy Statement and the Proposal.

Federated Farmers suggests that the Summit Road (Canterbury) Protection Act provides a useful starting point for any consideration of the compensation issue. Federated Farmers considers that Parliament should ensure that the sort of protection offered by the compensation provisions in the Summit Road legislation is not only included in any Coastal Policy Statement, but also that the fundamental flaw in the Resource Management Act

¹ *New Zealand Herald* 4 March 2005, A8

regarding compensation is corrected. This would go a long way towards protecting the interests of private landowners.

Property Rights

In respect of property rights, it is considered that one of the major principles on which the country's economy is based is that property owners have security over their property rights. Rights in property should not be taken arbitrarily by other people, most notably the state, and legislation should not be enacted which provides for rights in property to be taken arbitrarily. Federated Farmers considers that there are a large number of planning instruments that have been developed at all levels of government that provide for just that – rights in private property to be arbitrarily taken by the councils that have developed the relevant laws and regulations, for example by way of their policy statements and plans. As a result, farmer land owners in the relevant areas have their rights to undertake reasonable activities on their land unreasonably fettered by the state.

Federated Farmers considers that it is extremely important to the well-being of the country that those who invest and those who propose to invest have sufficient certainty that their investment won't be devalued by central or local government action. Investors must have the confidence that their assets and goods are safe from confiscation if they are to invest, or alternatively that they will be properly compensated if property or rights in property are required by Government or other requiring agencies in the public good. Federated Farmers considers that great care needs to be taken in the development of the Proposal to ensure that it will not undermine investor confidence in the country as a whole.

One of the major principles on which the country's economy is based is that property owners have security over their property rights, which will not be taken arbitrarily by other people, notably the state. One of the principal functions of Government, at both local and national level, is to protect the security of its citizens, including minority groups. Great care also needs to be taken to ensure that the Proposal does not run counter to this central role that the state has to play, by reducing the rights of the minority group who are private land owners in coastal areas.

Federated Farmers also considers it extremely important that legislation such as the Resource Management Act and instruments deriving from such legislation provide for sufficient checks and balances to ensure that the legislation works to benefit all. For example, if it seems necessary for property rights to be affected by Government or other requiring agencies in the public good, then there needs to be sufficient checks and balances in place to ensure that only such rights as necessary are affected, and that proper compensation is made for the taking of those rights. Many of these checks and balances are provided for under the Resource Management Act by providing appeal rights to the Environment Court. It is of concern to Federated Farmers that the Proposal makes no provision for there to be such checks and balances.

Long Associations with Land

In the contest of rights in property, Federated Farmers notes with some concern the provisions in the Proposal that relate to the Treaty of Waitangi and to the tangata whenua.

Section 8 of the Resource Management Act requires all persons exercising functions and powers under the Act to take into account the principles of the Treaty of Waitangi. Federated Farmers considers that the principles of the Treaty are applicable to New Zealand as a whole and all New Zealanders, not only to tangata whenua. In particular, Policy 3 of the Proposal discusses characteristics of the coastal environment that are of special value to tangata whenua. While Federated Farmers has no issue with the Policy as it applies to tangata whenua, it should be noted that many of the sentiments alluded to by the Policy are shared by New Zealanders of other origins, whose families have owned the same piece of land for many generations and who have long since formed an association with that land, which runs much deeper than the bundle of property rights that constitutes the traditional English law

concept of “ownership”. Federated Farmers considers that this association with the land is able to be addressed in terms similar to those expressed in the provisions of the Proposal that relate specifically to the Treaty of Waitangi and to tangata whenua.

In this context, Federated Farmers’ concern is that, while the provisions in the Proposal address these associations in terms that indicate the association is to be provided for in the case of tangata whenua, there appear to be no similar provisions that address those same matters in the case of other people, including landowners, who have had a long association with particular pieces of land. While Federated Farmers makes no specific submission requests on the topic, the Board of Inquiry is asked to note that the values behind the provisions in the proposal that relate to the Treaty of Waitangi and to the tangata whenua are shared by others in relation to land in the coastal environment, and involving what may be a different set of characteristics.

Public Access

Federated Farmers recognises that the maintenance of public access to and along the coastal marine area is a matter of national importance. However, the Federation considers it important that this imperative is tempered by the reality that much of the area adjacent to the coastal marine area is physically difficult to access, and that in other parts, even though access to the coastal marine area may not be physically difficult, there is little public demand for the provision of such access.

But the matter of public access to private land is of great importance to Federated Farmers, as the Federation’s members own considerable amounts of land that is in the coastal environment and in some cases that is in the coastal marine area.

It is particularly noted that there are a number of issues relating to the coastal environment which are of importance to New Zealanders, and which are currently under consideration through other processes, but are also relevant to the Proposal. One example is the recent Walking Access Bill, which was introduced to Parliament on 8 April. The Bill would establish a Crown entity, the New Zealand Walking Access Commission, to provide a leadership and co-ordination role in the provision of public access, including to areas in the coastal environment. Federated Farmers considers it important to note that, in the regulatory impact statement section of the Bill, the statement is made that “the government has agreed that there should be no new legal mechanism for the creation of access across private land”. The Bill places reliance on providing new public access to areas in private ownership by way of existing legal instruments, including that of negotiated access.

As is discussed below,² the "Foreshore Project Final Report" indicates that there is private land in the coastal marine area abutting other land in the coastal environment, along approximately one third of the country’s coastline. Federated Farmers considers it important that there should not be any provisions in the Proposal that jeopardize the rights of the private owners of land that is in the coastal marine area, or indeed in other parts of the coastal environment.

Nevertheless, Federated Farmers is aware of the need to see that public rights of access over publicly owned land are protected. Landowners of land adjacent to coastal marine areas are particularly anxious to protect the interest they have as members of the public in their adjacent maritime areas. We consider that public rights of access over publicly owned land to be very important.

² In the section titled “The Extent of the Coastal Environment”.

Natural Character

What is and is not “natural character” is discussed at length in various cases that have been decided by the Environment Court, in particular *Whakatipu Environmental Society and Others v The Queenstown-Lakes District Council*.³

With relation to landscapes, in para 87 of the *Whakatipu* decision, the Environment Court notes that “To qualify under s 6(b) a landscape must not only be outstanding, it must also be ‘natural’” (emphasis in original). The Court goes on to state that:

The dictionary definition of “natural” is:

- (a) existing in or caused by nature; not artificial (natural landscape);
- (b) uncultivated: wild (existing in its natural state)⁴

That definition is a little simplistic in our view: Much more landscape has been affected by human activity than is commonly understood. ...

In para 88 of the decision, the Court states that it agrees with an explanation of the meaning of the word “natural” given by the Planning Tribunal in *Harrison v Tasman District Council*.⁵

The word “natural” does not necessarily equate with the word “pristine” except in so far as landscape in a pristine state is probably rarer and of more value than landscape in a natural state. The word “natural” is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlife ... and many other things of that ilk, as opposed to manmade structures, roads, machinery.

In para 89 of the decision the Court sets out what it considers are included in the “criteria of naturalness”, and goes on to state that “The absence or compromised presence of one or more of these criteria does not mean that the landscape is non-natural, just that it is less natural”. But curiously, in contrast to its finding in the immediately preceding paragraph that manmade structures, roads and machinery are non-natural, the Court goes on to declare that “There is a spectrum of naturalness from a pristine natural landscape to a cityscape”.

Federated Farmers considers that it has become very difficult to understand what the Environment Court considers “natural character” to be. On the one hand, following *Harrison*, any environment that includes any “manmade structures, roads or machinery” would appear to be non-natural, whereas on the other hand, following *Whakatipu*, it would seem that a city environment, which clearly is in large part man-made, can be considered to have natural character.

In *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council*,⁶ the Environment Court found that all coastal environments have natural elements, and that it is important to identify those natural elements, patterns and processes.

Given, then, the reliance that many authorities appear to place on the *Whakatipu* case, it follows that if large areas of farmland, with the inherent “manmade structures, roads and machinery” that have become part of farmland today, are considered to be of natural character, then so should parts of, for example, the coastal environment of Auckland City, be considered to be of natural character.

Federated Farmers is concerned to see that the Proposal does not result in varying definitions of “natural” being adopted, depending on whether the word “natural” relates to the coastal environment in rural areas or to the coastal environment in an urban setting. The Federation notes with concern that the definition adopted by various authorities in the case of

³ Environment Court decision C180/99.

⁴ *Concise Oxford Dictionary* (1990) p 906.

⁵ [1994] NZRMA 193.

⁶ Environment Court decision C179/03.

the rural coastal environment is often broad, while the definition adopted for the urban coastal environment is usually conveniently narrow. The Federation is aware of several cases where areas of productive farmland in the coastal environment have been determined to be “outstanding natural landscapes” based on what seems to be an extremely broad definition of the “natural” character of the relevant coastal environment.

Federated Farmers considers that the definition of “natural” that is adopted for the purpose of establishing its meaning in terms of s 6(a) of the Resource Management Act should be very close to the dictionary definition set out in the *Wakatipu* case above. It is notable that, in contrast to the *Wakatipu* case, in the *Harrison* case the Court was considering the meaning of the word “natural” in the context of the coastal environment.

In summary, then, Federated Farmers considers that the Proposal should set out a clear definition of what it considers “natural character” to be, in the context of the coastal environment, and that the definition take a narrow view of “natural” character.

The Extent of the Coastal Environment

Federated Farmers is concerned to see that the Proposal does not result in the extension of what is generally understood to be the “coastal environment”.

Federated Farmers understands that what is meant in Resource Management Act terms by the phrase “coastal environment” derives from the 1977 case *Northland Regional Planning Authority v Whangarei County*.⁷

What constitutes the coastal environment will vary from place to place and according to the position from which a place is viewed. Where there are hills behind the coast, it will generally extend up to the dominant ridge behind the coast.

Thus by this description, the “coastal environment” is an environment in which the coast is a significant part or element. This description has been carried over into the Resource Management Act era in a number of cases.⁸

In *Coutanche v Rodney District Council*,⁹ the then Planning Tribunal found that the coastal environment was a complex, diverse, and fragile ecological and environmental system, which included inland lakes, dunes, and a wetland area that were all contiguous with, or close to, the actual coastline.

The Environment Court in *Pigeon Bay Aquaculture* held that s 6(a) of the Resource Management Act seeks to preserve natural elements in coastal environments and to protect them from inappropriate development, subject to the overriding constraints of s 5.

Federated Farmers’ concern with what might amount to the extension of what is meant by the “coastal environment” arises from the fact that the Proposal does not make it clear what it means by the term “coastal environment”.

It is considered that the term “coastal environment” is a term that is used by the general public in several different senses:

- the foreshore and seabed;
- the coastal marine area;
- the “beach” generally;
- the “coast” generally.

Federated Farmers notes that, taking the “coastal environment” in its broadest sense, a considerable amount of land in the “coastal environment” is in private ownership. The

⁷ Town and Country Planning Appeal Board, case A4828.

⁸ Eg *Wilkinson v Hurunui District Council* Environment Court decision C050/00; *Dudin v Whangarei District Council* Environment Court decision A022/07.

⁹ Environment Court decision W94/93.

"Foreshore Project Final Report", a report for the Minister of Land Information, 12 December 2003 by Land Information New Zealand indicates that there is private land in the foreshore along approximately one third of the country's coastline. Generally, approximately half of the country's land is in private ownership. Thus, Federated Farmers considers that this figure is likely to be the same in the case of land in coastal areas, leading to the conclusion, in other words, that approximately half the country's coastal land is in private ownership.

Federated Farmers considers that the general public's understanding of what is meant by the "coastal environment" includes land that is in one way or another subject to coastal influences, so can in some cases run well inland from the "beach" or the "foreshore".

Federated Farmers is concerned to see that the interests of those who own land on or near the coast are safeguarded. Land in the "coastal environment" is often in productive pasture, and in some cases may be used as arable land. The lack of a clear definition in the Proposal as to what is meant by the "coastal environment" means that private land could be subject to policies that are irrelevant to the use to which the land is being put. Federated Farmers notes that coastal land owners, as all land owners, have paid (and continue to pay) rates on their land, and they fund the costs of managing that land as part of their businesses.

Thus Federated Farmers is of the view that due regard should be had for the rights of the private owners of land in the "coastal environment" in the development of the New Zealand Coastal Policy Statement.

In summary, Federated Farmers considers that it would be useful if the Proposal was to include a clear definition of what is meant by the "coastal environment". As it stands, it seems to the Federation that several of the objectives and policies attempt to extend the definition of the "coastal environment" to include elements that would, generally, be considered to be well away from any coastal influence.

The Use of the Word "Appropriate"

Federated Farmers is concerned at the number of instances there are in the Proposal of the word "appropriate". While it is recognised that the word "inappropriate" is used in the Purpose and Principles part of the Resource Management Act, which in turn guides the part of the Act which describes the contents of New Zealand Coastal Policy Statements, it is considered that documents such as the Proposal should offer a great deal more by way of guidance as to what is meant by, for example, an "appropriate" opportunity (Policy 2(g)) or "appropriate" characteristics (Policy 3(b)).

Federated Farmers considers that policies that rely on the words "appropriate" or "inappropriate" provide no guidance to those that need to make use of those policies, and that if suitable wording cannot be arrived at to describe what it is that the policies that contain those words is trying to achieve, then those policies should be removed from the Proposal.

Conclusion – General Comments

Thus, then, while Federated Farmers generally supports the Proposal, nevertheless a number of specific submissions on it are made. The Federation asks that the Board of Inquiry to amend the Proposal according to the submissions made on it by Federated Farmers, and make recommendations to the Minister accordingly.

Specific Submissions

GENERAL

The specific provisions of the Proposal that my submission relates to are:

The whole of the Proposal.

My submission is:

That there is no definition of “natural character” on the Proposal.

Federated Farmers considers that it has become very difficult to understand what “natural character” is. On the one hand, any environment that includes any “manmade structures, roads or machinery” can be considered non-natural, whereas on the other hand, it would seem that a city environment, which clearly is in large part man-made, can be considered to have natural character.

Federated Farmers is concerned to see that the Proposal does not result in varying definitions of “natural” being adopted, depending on whether the word “natural” relates to the coastal environment in rural areas or to the coastal environment in an urban setting. The Federation considers that the definition adopted by various authorities in the case of the rural coastal environment is often broad, while the definition adopted for the urban coastal environment is usually conveniently narrow. The Federation is aware of cases where areas of productive farmland in the coastal environment have been determined to be “outstanding natural landscapes” based on what seems to be an extremely broad definition of the “natural” character of the relevant coastal environment.

Federated Farmers considers that the Proposal should set out a clear definition of what it considers “natural character” to be in the context of the coastal environment.

I seek the following changes to the Proposal:

That that the Proposal set out a clear definition of what “natural character” is, in the context of the coastal environment.

The specific provisions of the Proposal that my submission relates to are:

The whole of the Proposal.

My submission is:

That the “coastal environment” is not described in the Proposal.

Federated Farmers’ concern arises from the fact that the Proposal does not make it clear what the Proposal means by the term “coastal environment”.

It is considered that the term “coastal environment” is a term that is used by the general public in several different senses. It is considered that the general public’s understanding of what is meant by the “coastal environment” includes land that is in one way or another subject to coastal influences, so the “coastal environment” can in some cases run well inland from the uppermost reaches of tidal water.

Federated Farmers is concerned to see that the interests of those who own land on or near the coast are safeguarded. Land in the “coastal environment” is often in productive pasture, and in some cases may be used as arable land. The lack of a clear definition in

the Proposal as to what is meant by the "coastal environment" means that private land could be subject to policies that are irrelevant to the use to which the land is being put. Federated Farmers notes that coastal land owners, as all land owners, have paid (and continue to pay) rates on their land, and they fund the costs of managing that land as part of their businesses.

Federated Farmers considers that it would be useful if the Proposal was to include a clear definition of what is meant by the "coastal environment". As it stands, it seems to the Federation that several of the objectives and policies attempt to extend the definition of the "coastal environment" to include elements that would, generally, be considered to be well away from any coastal influence.

I seek the following changes to the Proposal:

That the Proposal include a clear definition of what is meant by the "coastal environment".

The specific provisions of the Proposal that my submission relates to are:

The whole of the Proposal.

My submission is:

That there is excessive use of the word "appropriate".

Federated Farmers is concerned at the number of instances there are in the Proposal of the word "appropriate". It is considered that documents such as the Proposal should offer a great deal more by way of guidance as to what is meant by, the word "appropriate".

Federated Farmers considers that policies that rely on the words "appropriate" or "inappropriate" provide no guidance to those that need to make use of those policies, and that if suitable wording cannot be arrived at to describe what it is that the policies that contain those words is trying to achieve, then the policies should be removed from the Proposal.

I seek the following changes to the Proposal:

That suitable wording be developed to replace the word "appropriate" where it occurs, and that if such words cannot be developed to describe what it is that the policies that contain those words is trying to achieve, then the policies be removed from the Proposal.

The specific provisions of the Proposal that my submission relates to are:

Objective 2.

My submission is:

That Objective 2 misuses the phrase "sustainable management".

Federated Farmers considers that Objective 2 in the Proposal would be better worded if it was worded in a manner that was consistent with the generally recognised use of the phrase "sustainable management".

I seek the following changes to the Proposal:

That Objective 2 be rewritten to read:

Subdivision, use, and development in the coastal environment are sustainably managed.

The specific provisions of the Proposal that my submission relates to are:

Objective 3.

My submission is:

That Objective 3 sets too high a standard.

Federated Farmers considers that Objective 3 in the Proposal sets too high a standard to be achieved in respect of the natural character of the coastal environment, to such an extent that it is inconsistent with the principles of sustainable management.

The standard sought to be achieved is also inconsistent with the wording of the relevant section of the Resource Management Act.

While section 6(a) of the Resource Management Act requires that the natural character of the coastal environment be preserved, the provision requires no more than that the coastal environment be protected from inappropriate subdivision, use, and development. There is no requirement for the protection or restoration of natural landscapes, features, processes and indigenous biological diversity.

In *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council*¹⁰, the Environment Court held that s 6(a) seeks to preserve natural elements in the coastal environment to protect them from inappropriate development. The Court also concluded that preservation is subject to the qualification as to inappropriate development.

I seek the following changes to the Proposal:

That Objective 3 be rewritten to read:

The natural character of the coastal environment is preserved, through the protection of natural landscapes, features, processes and indigenous biological diversity from subdivision, use and development that is unsuited to the site of such proposed activity.

The specific provisions of the Proposal that my submission relates to are:

Objective 5.

My submission is:

That Objective 5 misrepresents the whole of the coastal marine area as being publicly owned.

Federated Farmers considers that Objective 5 in the Proposal should be reworded in a manner that does not suggest that the whole of the coastal marine area is publicly owned.

¹⁰ Environment Court decision C179/03.

As discussed above, there is a proportion of the coastal marine area that is in private ownership, so it cannot be described as public open space.

I seek the following changes to the Proposal:

That Objective 5 be rewritten to read:

The public utility of the publicly owned part of the coastal marine area as public open space is recognised, and its cultural and amenity values as open space are protected.

The specific provisions of the Proposal that my submission relates to are:

Objective 7.

My submission is:

That Objective 7 sets too high a standard.

Federated Farmers considers that Objective 7 in the Proposal sets too high a standard to be achieved in respect of water quality. It is considered that the improvement in water quality where it has deteriorated from its natural state should only be an objective in cases where it has deteriorated to an unsafe level, be that for humans or animals or wildlife.

I seek the following changes to the Proposal:

That Objective 7 be rewritten to read:

Water quality in the coastal environment is maintained, or improved over time where it has deteriorated from its natural state to an unsafe level.

The specific provisions of the Proposal that my submission relates to are:

Objective 8.

My submission is:

That Objective 8 unjustifiably discourages the use of hard protection structures.

Federated Farmers considers that recourse to hard protection structures will not necessarily always be inappropriate, and that sometimes such structures will be the best option for particular areas. The "section 32 evaluation" discloses no reason that justifies hard protection structures as being classified as inappropriate.

I seek the following changes to the Proposal:

That the words "and discouraging recourse to hard protection structures" be removed from Objective 8.

The specific provisions of the Proposal that my submission relates to are:

Objective 10.

My submission is:

That Objective 10 doesn't recognise the interests of private owners of land in the coastal marine area.

Federated Farmers is concerned that there is an objective in the Proposal recognising the Crown's interests as an owner of land in the coastal marine area, while there is no such objective stating that the owners of private land and other interests in the coastal marine area have interests that should be recognised also.

I seek the following changes to the Proposal:

That Objective 10 be rewritten to read:

Management of the coastal environment recognises the Crown's interests as an owner of land in the coastal marine area, private interests including that of ownership of land in the coastal marine area, and New Zealand's international obligations.

The specific provisions of the Proposal that my submission relates to are:

Policy 1.

My submission is:

That the definition of the coastal environment is too vague and extensive.

Federated Farmers considers that, as it stands at present, Policy 1 is too vague to be an effective policy, and that its provisions will result in too much land that influences the coast in only a minor way being included as part of the coastal environment.

I seek the following changes to the Proposal:

That Policy 1 be amended by removing the words "at least" from the introductory phrase, and amending (f) to read:

(f) landscapes and features that contribute significantly to the natural character, visual qualities or amenity values of that environment.

The specific provisions of the Proposal that my submission relates to are:

Policy 4.

My submission is:

That Policy 4 doesn't recognise the rights of private owners of land in the coastal environment.

Federated Farmers is concerned that Policy 4 provides for the transfer, delegation or sharing of local authority functions, powers and duties regarding characteristics of special value to tangata whenua, but fails to recognise the interests, including an ownership interest of private individuals, that there may be in the land that contains these

characteristics. It is of particular concern that while private land owners have the opportunity to influence the local authorities who would otherwise be responsible for the relevant functions, powers and duties through the normal democratic processes, no such opportunity exists in the case of functions, powers and duties that are transferred or delegated to tangata whenua. Thus it is that Policy 4 is undemocratic.

In relation to this policy, it is particularly noted that there are areas in the coastal marine area that are in private ownership.

Federated Farmers considers that the Policy should be deleted or reworded to ensure that the democratic rights of owners of private land in the coastal environment on which there are characteristics of special value to tangata whenua are provided for.

I seek the following changes to the Proposal:

That Policy 4 be deleted or reworded to ensure that the democratic rights of owners of private land in the coastal environment on which there are characteristics of special value to tangata whenua are provided for:

The specific provisions of the Proposal that my submission relates to are:

Policy 5.

My submission is:

That Policy 5 misuses the phrase “precautionary approach”.

Federated Farmers notes with some concern the emphasis that the Policy 5 places on the so-called “precautionary approach”. Federated Farmers considers that the “precautionary approach” as use in Policy 5 is confused with the “precautionary principle”.

The precautionary principle is based on the belief that society should seek to avoid environmental damage by careful forward planning, avoiding potentially harmful activities. Since its introduction to the world in 1984, it has gone on to become one of the main concepts in environmental law and policy, with many commentators holding that the principle has become a General Principle of International Law.

The Environment Court has found¹¹ that this general precautionary principle of environmental law is distinguishable from the precautionary or risk avoidance policy of the Resource Management Act. In a later case,¹² the Environment Court doubted whether a wider “precautionary principle” is useful, given that the approach is already inherent. Application of the precautionary principle would lead to double counting of the need for caution.

The “precautionary approach” is derived from RMA s 104(1)(a), s 3, and the definition of “environment” in s 2(1).

The Environment Court has also reviewed the applicability of the “precautionary approach” under the Act,¹³ and found that RMA s 3(f) justifies a precautionary approach. The general precautionary approach required by the Act applies where there is a threat of “serious or irreversible damage”. The Court also found that the appropriate standard of proof is on a sliding scale between the “balance of probabilities” and “beyond reasonable doubt”, depending on the impact of the effect.

¹¹ *McIntyre v Christchurch City Council* (1996) 2 ELRNZ 84.

¹² *Shirley Primary School v Christchurch CC* [1999] NZRMA 66.

¹³ *Ibid*

Federated Farmers considers that a precautionary approach is only valid where actions are proposed to be taken which would prevent damage occurring to the environment. We consider that any reflection of the "precautionary approach" in the Proposal should incorporate words to that effect.

Federated Farmers considers that, properly used, a precautionary approach is a "sword" for taking action to prevent possible damage to the environment (particularly when there is no certainty that damage will occur) rather than a "shield" for avoiding action (ie the grant of a resource consent), on the basis that there is no certainty that damage won't occur to the environment. The latter, in our view, is properly termed a "cautious" approach.

Federated Farmers considers that the danger of using the precautionary approach as a 'shield' is that it becomes a recipe for inertia. Claims can always be made that there is inadequate information or understanding about any given proposal for use and development.

Thus it is considered that a precautionary approach is properly used only in situations where damage to the environment may occur if nothing is done. In such situations, the precautionary approach means that the lack of knowledge or understanding should not be used as a reason for doing nothing.

Perhaps the clearest example of the precautionary approach being used is in the world's response to the so-called "global warming". In contrast, a well acknowledged example of a "cautious" approach is the Nation's response to genetic engineering.

I seek the following changes to the Proposal:

That Policy 5 identify that the precautionary approach is only valid in cases where damage to the environment may occur through inaction, and that a precautionary approach is not a valid approach in cases where the effects are uncertain, unknown or little understood.

That Policy 5 state that proposed activities whose effects on the coastal environment are uncertain, unknown or little understood, but whose effects are potentially significantly adverse to that environment are to be the subject of normal Resource Management Act processes.

The specific provisions of the Proposal that my submission relates to are:

Policy 7.

My submission is:

That the Policy is liable to result in excessive weight being given to the effects of activities on conservation land in the coastal environment.

Federated Farmers considers that, as it stands, the policy implies that more weighting should be given to the effects of activities for which resource consent is sought on conservation land than on other affected persons or other land. It is considered that it is enough for the policy to state that "Where land in the coastal environment is held or managed under the Conservation Act 1987, or an Act listed in the 1st Schedule to that Act, its status and purpose shall be taken into account when determining the status of activities in plans", and that the sentiments expressed in the second sentence of the policy, that "... where such land could be affected by an application for a resource consent, its status and purpose and the effects of the proposed activity on it shall be given due regard in the determination of the application", are provided for by way of the decisions provisions of the Resource Management Act anyway.

I seek the following changes to the Proposal:

That the final sentence in the policy, "Further, where such land could be affected by an application for a resource consent, its status and purpose and the effects of the proposed activity on it shall be given due regard in the determination of the application" be deleted.

The specific provisions of the Proposal that my submission relates to are:

Policy 8.

My submission is:

That the policy is unclear as to what is meant by "Areas proposed for statutory protection".

Federated Farmers considers that the phrase "area of the coastal environment for which a proposal for statutory protection has been publicly notified" is liable to lead to far too liberal interpretation of the sorts of areas the policy is intended to apply to. For example, areas subject to restrictions under a Resource Management Act proposed plan could be said to be subject to statutory protection. It seems from the "section 32 evaluation" that the policy is intended to apply only to areas such as those proposed to be marine reserves under the marine Reserves Act.

As with Policy 7, it is considered that the requirements set out in the Policy are provided for by way of the decisions provisions of the Resource Management Act anyway.

I seek the following changes to the Proposal:

That Policy 8 be deleted, or amended to make it clear that it applies only in the case of proposed marine reserves and other areas proposed to be protected under relevant, specified, legislation.

The specific provisions of the Proposal that my submission relates to are:

Policy 9.

My submission is:

That Policy 9 provides an important direction for relevant public authorities.

Federated Farmers considers that biosecurity risks could potentially give rise to significant adverse effects occurring within the coastal environment. It is considered that the policy provides an important direction for relevant public authorities.

I seek the following changes to the Proposal:

That Policy 9 be retained.

The specific provisions of the Proposal that my submission relates to are:

Policy 16.

My submission is:

That the Policy fails to recognise that not all of the coastal marine area is publicly owned.

Federated Farmers considers that Policy 16 should be reworded in a manner that does not suggest that the whole of the coastal marine area is publicly owned. As discussed above, there is a proportion of the coastal marine area that is in private ownership, so it cannot be described as public open space.

I seek the following changes to the Proposal:

That Policy 16(a) be rewritten to read:

recognise the public utility of the publicly owned part of the coastal marine area as public open space and protect the cultural and amenity values of the publicly owned part of the coastal marine area as open space.

The specific provisions of the Proposal that my submission relates to are:

Policy 18.

My submission is:

That it is important that the Proposal recognise the importance of making opportunities available for aquaculture activities in the coastal marine area.

Federated Farmers supports the Policy.

I seek the following changes to the Proposal:

That Policy 18 be retained.

The specific provisions of the Proposal that my submission relates to are:

Policy 19.

My submission is:

That the Policy fails to recognise the importance of working rural environments as part of the coastal environment.

Federated Farmers considers that it is important that policies in statutory instruments that relate to amenity values areas in which farming activity takes place recognise the significance of the working rural environment to those amenity values.

I seek the following changes to the Proposal:

That Policy 16 be amended by recognising that some areas derive their particular character and amenity value from the variety of rural activities that take place in those areas, and providing that any management of those areas will not impact adversely on the farming activity that takes place in those areas.

The specific provisions of the Proposal that my submission relates to are:

Policy 25.

My submission is:

That the Policy does not adequately distinguish the types of structure to which it applies.

Federated Farmers is concerned that the Policy might be applied to the sorts of structures to which it is not applicable. For example, drainage outlets into the coastal marine area are important in rural areas, and any requirement that future drainage be required to discharge into the coastal marine area through an existing outlet would be unreasonable and impractical.

Nevertheless, Federated Farmers has no objection to the Policy being retained as it relates to structures such as jetties.

I seek the following changes to the Proposal:

That Policy 25 be amended by providing that it does not apply to structures associated with drainage.

The specific provisions of the Proposal that my submission relates to are:

Policy 27.

My submission is:

That the requirement to have particular regard to “the expected effects on the site of climate change and sea level rise” is unreasonable.

Federated Farmers considers that the expected effects of climate change are very uncertain, to the extent that the Policy would be likely, when the “precautionary approach” prescribed by Policy 5 is adopted, that no reclamations could be granted consent.

It is also considered that, given the nature of the works involved in a reclamation, that any effects of predicted or actual climate change and sea level rise could be factored into the form and design of the reclamation.

I seek the following changes to the Proposal:

That Policy 27(b) be deleted, and a new Policy 27(i) added, reading:

- (i) the reasonably predicted effects on the site of climate change and sea level rise.
-

The specific provisions of the Proposal that my submission relates to are:

Policy 29.

My submission is:

That the Policy is unnecessary.

Federated Farmers considers that Policy 29 is unnecessary because adequate provision is made for local authorities to include provisions in plans for financial contributions under other more general provisions in the Resource Management Act.

Noting that requirements for financial contributions are implemented by way of conditions in plans or on resource consents, it is also considered that some of the criteria listed as being appropriate for financial contributions would be unlikely to meet the requirements that conditions on resource consents are required to meet.

I seek the following changes to the Proposal:

That Policy 29 be deleted.

The specific provisions of the Proposal that my submission relates to are:

Policy 30.

My submission is:

That Policy 30 fails to have regard to the fact that large areas of the coastal environment are working, dynamic, landscapes.

Federated Farmers is concerned that the Policy provides for the protection of qualities associated with the coastal environment, but does not recognise the activities that contribute to those qualities. A considerable amount of farming activity takes place in the coastal environment, and indeed it is considered that farming activity makes a considerable positive contribution to the qualities of the coastal environment, including in particular its natural landscape and landform.

There is a considerable discussion of the relationship between natural character and rural activity in the General Comments section of this submission. It is clear from the relevant case law that pastoral land is a part of the natural character of the coastal environment.

Thus Federated Farmers considers that the Policy should recognise that rural activities such as farming and forestry are a normal part of the coastal environment.

I seek the following changes to the Proposal:

That Policy 30 be amended by replacing the period at the end of the Policy with a “:”, and adding:

while recognising the role that dynamic, working rural landscapes play in defining the natural character of the coastal environment.

The specific provisions of the Proposal that my submission relates to are:

Policy 31.

My submission is:

That Policy 31 overstates the importance of biological diversity, overprotects flora and fauns and fails to pay sufficient regard to the rights of the owners of private land.

Federated Farmers considers that, while the protection of indigenous biological diversity is important, it is not a national priority in its own right, and it is not necessary to protect indigenous biological diversity in order to preserve the natural character of the coastal environment. It is particularly noted that the establishment, implementation and review of objectives, policies and methods, and the control of the use of land for maintaining indigenous biological diversity is a function of regional and district councils. As discussed in detail above, the natural character of the coastal environment is made up of many different factors, of which biological diversity is just one. By highlighting indigenous biological diversity as being a national priority in preserving the natural character of the coastal environment, this importance of this one factor in the make up of the natural character of the coastal environment is overstated, at the expense of the many other factors.

Parliament has chosen to give the protection of certain matters the status of “matters of national importance” in section 6 of the Resource Management Act. Biological diversity is not one of these matters. The Proposal should not pre-empt parliament’s role in determining what matters of national importance should be.

The Policy does not distinguish between areas of the coastal environment that are in public hands, and areas of the coastal environment that are privately owned. The Policy thus does not pay sufficient regard to the rights of the owners of the parts of the coastal environment that are privately owned to use that land to their best advantage. The role of property rights is discussed extensively above.

Federated Farmers notes also that the matter of biological diversity is of general importance, and is not limited to the coastal environment. In the absence of any national direction (for example, by way of national policy statement) on biological diversity, and given that the protection of indigenous biological diversity is a function of the country’s local authorities, Federated Farmers considers that there is no role for a policy whose purpose is the protection of indigenous biological diversity in a national coastal policy statement.

I seek the following changes to the Proposal:

That Policy 31 be deleted.

The specific provisions of the Proposal that my submission relates to are:

Policy 34.

My submission is:

That part (d) the policy is unduly subjective, and will unduly restrict the use of private land.

Federated Farmers considers that the words “wild or scenic” mean the Policy is wide open to a large range of subjective interpretations. It is considered that there are many “wild” features in the coastal environment that are not worthy of protection, and that there are many scenic features of the coastal environment that are in fact productive working rural

landscape. Federated Farmers considers that productive land should not be the subject of this policy.

I seek the following changes to the Proposal:

That Policy 24 be amended by removing section (d), or restricting its effect by amending it to read:

(d) wild, scenic and unaffected by human activity.

The specific provisions of the Proposal that my submission relates to are:

Policy 35.

My submission is:

That it is not possible to “restore” “nature”.

While Federated Farmers does not object to the principle of Policy 35, it is considered that it could be better worded. As discussed at length above, “natural character” can be considered to be something of a continuum, so on one interpretation, all areas in the coastal environment have natural character regardless of their state, leading to the conclusion that there can be nothing to “restore”.

On another analysis, it would seem to be a contradiction in terms to “restore” “nature”. Nature comes naturally, so it would seem to be impossible to “restore” it.

In summary, it is considered that the policy could be better worded.

It is also noted that Policy 35 is one of the policies where the word “appropriate” should be replaced by a description of what the circumstances are that are “appropriate”, as discussed at length above.

I seek the following changes to the Proposal:

That Policy 35 be amended by amending the opening statement to read:

It is a national priority to improve the naturalness of the natural character of the coastal environment

The specific provisions of the Proposal that my submission relates to are:

Policies 39 - 43.

My submission is:

That Policies 39 – 43 do not sufficiently distinguish the private coastal marine area from the public coastal marine area, and do not recognise that there is not public access to all parts of the coastal marine area.

Federated Farmers is concerned that Policies 39 – 43 could give the incorrect impression that there is public access to and along all parts of the coastal marine area. It is considered that the policies should be amended where necessary to distinguish that there are parts of the coastal marine area to which the public don't have access.

The matter of public access is discussed at length above, and it is particularly noted that there is a Bill currently before Parliament concerning the provision of public access, including to the coastal marine area. Federated Farmers considers it important to note the provision in the Bill to the effect that there should be no new legal mechanism for the creation of access across private land, with reliance instead being placed on providing new public access to areas in private ownership by way of existing legal instruments, including that of negotiated access.

I seek the following changes to the Proposal:

That Policies 29 – 44 be amended where necessary to distinguish that there are parts of the coastal marine area to which the public don't have legal access.

The specific provisions of the Proposal that my submission relates to are:

Policy 39.

My submission is:

That Policy 39 should distinguish locations where there is demand for public access from those where there is no demand for such access.

Federated Farmers considers that Policy 39 (and Policy 40 also) should recognise that there are in existence locations where there is no demand that there be public walking access to the coastal marine area. It is considered that it would be a waste of public resources for public access to the coastal marine area be enhanced, restored or promoted where there is no demand for such access.

I seek the following changes to the Proposal:

That Policy 39 be amended by amending section (e) to read:

- (e) identifying opportunities to enhance or restore public walking access where there is a demand for such access; and
-

The specific provisions of the Proposal that my submission relates to are:

Policy 40.

My submission is:

That Policy 40 should distinguish locations where there is demand for public access from those where there is no demand for such access.

Federated Farmers considers that Policy 40 (as per Policy 39 above), as it stands, sets too stringent a standard for the creation of esplanade reserves and strips, and should recognise that there are locations where there is no demand for esplanade reserves and strips. It is considered that it would be a waste of public resources for public access to be created by way of esplanade reserves and strips where there is no demand for such access.

It is considered that the requirement, that esplanade reserves or strips that would provide public access to or along the coastal marine area not be waived unless there are exceptional circumstances that mean provision of an esplanade reserve or strip would not be in the public interest, is excessively stringent. It is considered to be excessively stringent because it is liable to create instances where there are such reserves that are of no value to the public on the basis that members of the public have no wish for access at those particular places.

The creation of esplanade reserves creates a burden on the councils in whose areas they are created, in that their existence creates a need for the councils to maintain them. It is considered that it would be a waste of public resources if councils were required to create esplanade reserves where there is no demand for them. Esplanade reserves that are not used and not managed appropriately can become overgrown, impassable and a haven for weeds and pests. This in turn leads to the purpose of the esplanade reserves being defeated.

Federated Farmers considers that, in respect of esplanade reserves taken on subdivision where the area of the allotment is four hectares or more, the creation of the esplanade reserve should be left to the discretion of the council, as per sections 77(2), 230 and 237F of the Resource Management Act. The policy could provide that councils should have rules in their district plans which require esplanade reserves to be taken only in certain areas, which are specified in the plan.

Such changes would bring the policy more into line with Policy 41.

I seek the following changes to the Proposal:

That Policy 40 be amended by amending it to read:

Policy statements and district plans shall promote the creation of esplanade reserves and esplanade strips, where they do not already exist, to provide public access to and along the coastal marine area, in locations where there is a demand for such access. A requirement for an esplanade reserve or strip that would provide public access to or along the coastal marine area should be waived where there is little or no demand for public access to and along the coastal marine area, and in circumstances that are such that the provision of an esplanade reserve or strip would not be in the public interest.

The specific provisions of the Proposal that my submission relates to are:

Policy 43.

My submission is:

That the Policy should clarify that the policy should only apply to existing public access.

Federated Farmers considers that the policy would benefit if it was to be clarified to indicate that it applies only to existing public access.

I seek the following changes to the Proposal:

That Policy 43 be amended by amending the opening phrase to read:

A restriction on existing public access to and along the coastal marine area shall only be imposed where such a restriction is necessary

The specific provisions of the Proposal that my submission relates to are:

Policy 45.

My submission is:

That Policy 45 is insufficiently selective.

Federated Farmers considers that Policy 45 in the Proposal is insufficiently selective of the sorts of locations in the coastal environment in which it would be best to achieve the enhancement of water quality. While the qualifier of enhancing water quality only “where practicable” is supported, it is considered that making improvements in water quality where it has deteriorated from its natural state should only be undertaken in cases where there are clear benefits to the environment.

I seek the following changes to the Proposal:

That the opening phrase of Policy 45 be rewritten to read:

Where the quality of water in the coastal environment has deteriorated it shall be enhanced, where practicable and where there are clear benefits to the environment, with priority given where:

...

The specific provisions of the Proposal that my submission relates to are:

Schedule II.

My submission is:

That the coastal charging regime should be restricted to land of the Crown that is occupied in the coastal marine area.

While Federated Farmers recognises that “occupy” is defined in the Resource Management Act to mean “the activity of occupying any part of the coastal marine area”, it is considered that the intent of the Schedule would be clarified if it was clearly specified that it applies only to the coastal marine area.

Federated Farmers considers that it should be recognised that not all of the land in the coastal marine area is owned by the Crown, and that technically private land in the coastal marine area land is “occupied” by the owner of that land. As such, it is considered that the private owners of land in the coastal marine area could be subjected to a coastal occupancy charging regime, a situation which, if it eventuated, is considered would be unjust. The Federation considers that the Schedule should be restricted so as to only apply to publicly owned land.

I seek the following changes to the Proposal:

That Clause 1 of Schedule II be amended to read:

1. In any region where:
 - (a) as a result of occupations of publicly owned land, the general public are excluded from areas that would otherwise be of value for public access, or other substantial public benefits are lost; and
 - (b) the private benefit gained from occupations of publicly owned land is such that a fair and administratively efficient charging regime would deliver net revenue for projects that promote better management of the coastal marine area, the regional

council should include a coastal occupation charging regime in its regional coastal plan..

I wish to be heard in support of my submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.



.....
Bruce McNab
Board Member, Federated Farmers of New Zealand

7 May 2008

.....
Date
(A signature is not required if you make your submission by electronic means)

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