

BEFORE THE HEARING PANEL

UNDER THE of the Resource Management Act 1991 (the Act)

IN THE MATTER of submissions to the Waitomo District Council under Clause 5 of Schedule 1 of the Act

AND

IN THE MATTER The report pursuant to Section 42A of the Act on behalf of Waitomo District Council for Hearing 1 on the Waitomo Proposed District Plan

BETWEEN **WAITOMO DISTRICT COUNCIL**

FEDERATED FARMERS OF NEW ZEALAND

STATEMENT OF EVIDENCE OF PETER MATICH ON BEHALF OF FEDERATED FARMERS OF NEW ZEALAND

(PLANNING)

21 June 2024



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1. Introduction

- 1.1 My name is Peter Match. I am a planner and I am currently employed as a Principal Planner for Federated Farmers of New Zealand Incorporated (Federated Farmers).
- 1.2 I hold a Bachelor of Planning Degree and a Bachelor of Arts Degree from the University of Auckland and a Master of Environmental Studies Degree from Victoria University. I have 33 years' experience in resource management planning in New Zealand in a variety of public and private sector roles, including a range of work on rural and farming issues. I am a Member of the New Zealand Planning Institute.
- 1.3 I have read, and am familiar with, the Environment Court's Practice Note 2023 for expert witnesses. Other than where I state that I am relying on the evidence of another person or publication, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2. Scope of evidence

- 2.1 Federated Farmers lodged a submission and further submission on the Proposed Waitomo District Plan (Proposed Plan). Federated Farmers' submission is that it supports the Proposed Plan in general and seeks some amendments that will make the plan implementation process more efficient for farmers.
- 2.2 I have been asked by my employer, Federated Farmers, to provide evidence in relation to provisions of the Proposed Plan relating to *Coastal Environment*. My evidence focusses on provisions where amendments have been sought by Federated Farmers.
- 2.3 I address the Section 42A Report for Topic: Chapter 32 – Coastal Environment prepared by Mr Alex Bell under section 42A of the Resource Management Act 1991 (the Act) (the Report).¹ I have focussed on the key aspects of Mr Bell's recommendation that I do not agree with. Any omission to specifically respond to matters contained in the Report, should not be interpreted as agreement with that matter. My response to the Report is set forth below under the topic sections to which the Report relates.

¹ Section 42a report on submissions and further submissions Topic: Chapter 32 – Coastal Environment for Waitomo District Council.

2.4 Where amendments have been sought with respect to the coastal environment provisions in the submission, Federated Farmers' relief sought is as follows:

| Provision reference | Relief sought | Reasons |
|---------------------|--|--|
| Policy CE-P1.7 | Amend subclause 7 of policy CE-P1 to address the issues related to public access across private property and the related health and safety issue. | <p>Concerns over the impact of maintaining and enhancing public access to the coastline where this occurs over private property. This raises issues of security and safety for private landowners. Farmers have, and still are experiencing public access users leaving open gates and/or straying off the public access paths.</p> <p>A balance needs to be obtained so that private landowners, particularly in rural environments are not adversely impacted on by members of the public and other parties seeking access. Any policy that seeks to maintain and enhance public access needs to recognise that public access does occur over private property and the adverse effects that may result need to be addressed.</p> |
| Policy CE-P2 | <p>Add a new clause to CE-P2 as follows:</p> <p>6. Engage with private landowners over which public access is sought so that a formal agreement can be reached on what suitable and appropriate public access should be developed.</p> | <p>The Council also needs to consider how access to the sites can be controlled so that private landowners are still able to continue with their existing and lawfully established activities and operations.</p> <p>As well there is a need to consider health and safety issues and who will be liable if a person using an access track encounters a hazard and/or is injured while using a public access track.</p> |
| Objective CE-O2 | <p>Relief sought</p> <p>(a) clarification that the wording of objective CE-O2 does in fact encompass on-going farming operations; and</p> <p>(b) if the answer to (a) above is yes then Federated</p> | <p>Federated Farmers support Objective CE-O2 as it is currently drafted. The objectives recognises that it needs to recognise and protect the values and character of the areas of outstanding natural character identified in the relevant schedule from inappropriate subdivision, use and development. The assumption is that existing and lawfully</p> |

| Provision reference | Relief sought | Reasons |
|--|--|--|
| | <p>Farmers seeks the retention of objective CE-02 as it is currently drafted or with wording to similar effect; or</p> <p>(c) if the answer to (a) is no, Federated Farmers seeks the amendment of objective CE-02 so that it specifically refers to the on-going operation of existing and lawfully established activities such as farming; and</p> <p>(d) the inclusion of a policy for natural character which provides for the on-going operation of existing and lawfully established activities such as farming within natural character areas;...</p> | <p>established activities such as farming will be able to continue.</p> <p>However, they have concern that none of the policies for natural character appear to provide for the on-going operation of farms in a natural character area other than for track maintenance and fencing.</p> <p>It is important that there is a policy framework that allows for the on-going operations of farms which means it needs to be specifically spelt out in relevant objectives and policies</p> |
| <p>CE Table 1 Activities Rules CE-R1, CE-R2, CE-R3, CE-R4, CE-R6, CE-R7, CE-R8, CE-R9 and CE-R15</p> | <p>(a) the amendment of the rule framework to provide for more realistic building sizes, earthwork volumes etc for existing and lawfully established activities and operations; and</p> <p>(b) any consequential amendments required as a result of the relief sought.</p> | <p>Concerns over the rules for buildings, tanks and silos, earthworks, quarrying activities and indigenous vegetation removal.</p> <p>While some of the rules provide for permitted activities, the limitations in the matters to be complied with are unrealistic and will unnecessarily constrain existing and lawfully established activities such as farming to continue.</p> <p>For example, in rule CE-R1 a building in an area of high/very high natural character and coastal environment is permitted if it is less than or equal to 5m in height and /or less than or equal to 30m² in size. In an area of outstanding natural character this activity requires a discretionary activity consent.</p> |

| Provision reference | Relief sought | Reasons |
|---------------------|---------------|---|
| | | Ancillary farm buildings will typically be a lot bigger than 30m ² and some will be in areas of natural character. For existing and lawfully established activities, there needs to be more realistic building sizes, earthwork volumes etc that reflect the practicalities and realities of existing activities and operations. |

2.5 I confirm I have read the following documents:

- Section 42A Report Topic: Chapter 32 - Coastal Environment.
- The Proposed Waitomo District Plan (2022).

3. The Report recommendations on Federated Farmers submission

Policy CE-P1

3.1 In the Report, Mr Bell supports some of Federated Farmers' requested relief with respect to recognising and providing for the functional need of certain activities to be in areas where the resource is located; and allowing lawfully established activities to continue to operate.² I agree with Mr Bell to the extent that these matters are in part provided for in Policy CE-P1.3 and CE-P13.5.

3.2 Where I may differ slightly from Mr Bell is that, in my opinion, relying on section 10 of the Act for lawful existing farming activity to continue to function, may put farmers, whose farms are situated within *coastal environment* areas, at a disadvantage in situations where they need to maintain existing farm infrastructure or replace/modernise farm buildings and structures.³ This scenario presents potential for an unwarranted degree of scrutiny of proposals to replace old buildings with structurally safe and compliant new buildings if the process in section 10 of the Act is to be followed to the letter.

3.3 This would be unfortunate where this arises as a consequence of, for instance, building code requirements having changed since any dilapidated buildings were first built. It may not be feasible to simply replace certain farm buildings with 'like-for-like' structures

² op cit. Para 39.

³ op cit. Para 44.

within exact existing building footprints or styles. For instance, prefabricated or kitset building structures that comply with modern building code requirements may not be readily commercially available, forcing more-expensive bespoke replacement of structures. On top of that, having the additional expense of assessment under section 10, in pursuit of a particular aesthetic appearance, simply because the site is within the *coastal environment*, would expose existing farmers in these areas to unnecessary extra expense and delay for building replacement. This is likely to amount to little or no extra environmental benefit in the wider context of existing farming activity occurring within rural open space areas. The same concern applies to replacement or upgrading of any farm structures or infrastructure such as farm tracks, stock mustering and sorting areas, fences, airstrips and helipads etc.

3.4 I note that Policy CE-P1.1 envisages that new activities should consolidate around existing development where natural character values have already been compromised. For farmers needing to replace existing farm buildings, replacement is more likely to occur in close proximity to a cluster of other existing farm buildings as a matter of practicality. Farmers are unlikely to want to build (say) a new tool shed further away from an existing farm implement storage shed than need be, in order to economise on day-to-day movement between buildings. Same goes for fodder storage sheds, agrichemical storage buildings, shearing sheds, milking sheds, livestock rearing and sheltering barns, holding and sorting pens, races, farm tracks, fences and so forth.

3.5 For these reasons I think it is appropriate for wider latitude to be given in Policy CE-P1.13 towards lawful existing farming activity within the Coastal Environment, along the following lines:

13. *Providing for the continued operation of lawfully established farming activities, including maintenance, upgrading and replacement of fences, water storage dams, farm access tracks, agricultural aircraft landing areas, and buildings and structures that support farming operations; and*

3.6 Consequential amendments to the Activities Rules tables would be appropriate to ensure that such activities are permitted in the Rural General Zone (as well as the Rural Production Zone) where there is a coastal environment overlay.

Policy CE-P2

- 3.7 Mr Bell considers that the amendment sought by Federated Farmers for an additional clause to the policy setting out a policy of engagement with landowners to reach formal agreement where any public access is sought, is not required.
- 3.8 While I agree that public access can only be provided across private property where there is a lawful agreement with the landowners, I do not agree that the plan does not need to address this in the policy framework. In the absence of a clear understanding about the consent authority's policy for negotiating formal public access over private land, I consider that the Plan is somewhat ambiguously pre-emptive about how this matter is dealt with.
- 3.9 In my opinion, an appropriate approach to future access would entail identifying (and possibly mapping, in a structure plan) alignments for future access to key waterways where it is desirable to have public access. These identified future accessways could be included in a Plan Schedule/structure plan, that is linked to a *matter of control* in the Plan's subdivision rules that trigger(s) a condition requiring that these future public access alignment(s) be facilitated by appropriate legal instruments prior to issue of a section 224(c) Certificate where this is possible. That way, the process for access negotiation will be triggered with the Registrar-General of Land. If the relevant landowner's approval(s) cannot be obtained, the titles and access instruments cannot take effect and the subdivision consent would ultimately lapse.
- 3.10 Whichever approach is adopted, my opinion is that it would be practical for the Council to ensure that consultation occurs with affected landowners over future public access before requiring such access to be formalised. This could take the form of some sort of policy acknowledgement framing how the Plan addresses this issue, which could be a clause in the policy along the following lines:

CE-P2. Maintain and enhance public access to the coastline by...

Having subdivision consent applicants consult with owners of other land over which public access is proposed, in order to determine whether or not it is practical to impose a consent condition requiring such access to be formalised in the course of subdivision.

Objective CE-O2

- 3.11 Having regard to the online proposed planning maps and aerial imagery for the Outstanding Natural Character Area ('ONCA') around the southern side of the Kawhia Inlet showing predominantly bush clad land for the entire area, there does not appear to be any existing active farmland within this ONCA.
- 3.12 Noting this, if the landcover within this ONCA is already protected in perpetuity by legal instruments registered on the land titles, I would be inclined to agree with Mr Bell that there is no need for additional specific wording around providing for lawfully established farming activities within the ONCA provided for in Objective CE-O2.⁴
- 3.13 However, if these existing bush-clad parcels contain private land in respect of which there is no legal instrument registered on the titles that protects the bush in perpetuity, then I consider there would need to be recognition in the plan's policy framework that addresses limitations of ability of private landowners to use their land to obtain income from lawful activity, such as farming which is appropriate in a rural area. If a landowner has neglected to clear scrub from a farm block for several years (and there could be a number of reasons for such instance arising), it should not be presumed that such landowner is content to allow themselves to be restricted in ability to earn income from the land. They are required to pay rates on it after all.
- 3.14 I have not seen any information about the land titles to know whether there are legal instruments (such as covenants) in place to protect the existing bush. This may be something the Hearing Panel wishes to further investigate, lest there is a need to make changes to the Plan's policy settings to clarify how farming activity should be appropriately enabled.

CE Rules – Table 1 Activities rules

- 3.15 Mr Bell has recommended rejecting the relief sought by Federated Farmers for more appropriate building sizes, earthworks volumes etc to enable farming activity in the coastal environment.⁵
- 3.16 Having reviewed the various prescribed limitations in CE - Table 1 – Activities Rules, my general impression is that the limitations are somewhat 'urban-centric' in quanta

⁴ op cit. Para 44.

⁵ op cit. Para 103.

and are unrealistic for enabling day-to-day farming activity and will unnecessarily constrain farming, for little or no environmental benefit.

3.17 Having noted that, there are likely be situations where is it appropriate to consider potential adverse impacts of some types of activities in the coastal environment, such as the visual amenity and soil erosion impacts of large scale earthworks.

3.18 However, this does not mean that all earthworks should be drastically curtailed. There are differences in the scale and intensity of adverse effects, which are related to the wider land use settings. Land in urban areas is considerably more intensely developed, with higher population densities than in rural areas, and there is more potential for adverse effects on other property and people as a result of landform modifications where aspects such surface water flow-paths and ponding areas are affected.

3.19 By contrast, farming involves a range of commonplace earthworks that are important for the day-to-day farm management. These include:

- Ploughing, tilling, preparation etc of soil for various crops (including fodder crops), and pasture maintenance
- Maintenance of farm tracks, stock access and other hard stand areas for farm vehicles, fodder storage, feed pads and stock mustering
- Operating farm quarries for sourcing hard stand material (for farm tracks and stock access areas etc) used on the farm
- Installing and maintaining drains for pasture
- Installing and maintaining fences and water pipelines, troughs and dams for stock drinking water and horticultural crop structures.

3.20 While these all involve 'earthworks', these are not the sort of earthworks that typically occur in association with residential or urban commercial or industrial land use. The potential for adverse effects from these types of farm earthworks are in my estimation likely to be *less than minor* in the context of the wide-open spaces of rural areas.

3.21 Further, while these sorts of earthworks commonly occur in farming areas, they tend to occur in relation to individual farm management choices of farmers. Therefore, the risk of cumulative adverse effects from all farmers simultaneously undertaking the same types of earthworks is low. In the instance of cultivation, it is unlikely that every farmer will decide to simultaneously plough every inch farmland at the same time.

- 3.22 In the instance of farm track maintenance, even if all the farmers decided to fix up farm tracks in advance of a forecast rainstorm, the area taken up by such farm track maintenance is a small fraction of the area of each farm, and the parts of those farm tracks needing maintenance is likely to be a small fraction of the length of the farm tracks in each case.
- 3.23 In the instance of operation of farm quarries, being typically between about 1,000m³ to 3,000m³ per farm quarry, these are typically small in area (in relation to the overall size of any given farm) and are only used for sourcing material for use within each farm. The amount of earthworks in each farm quarry is therefore relatively miniscule at the scale of rural areas, and the impact is probably inconsequential.
- 3.24 In terms of farm drain maintenance, this is occasional seasonal work fitted in around other farming activities and weather opportunities. Farm drains are important for maintaining aerobic health of soil and keeping drains clear helps to lower the risk of unanticipated ponding and damming of waterways with flood debris.
- 3.25 If there is a major flood event affecting rural areas, it is likely to leave large tracts of land affected by ponding (as well as sediment movement) on a vast scale. In such instances, it is difficult to conceive of environmental benefits from regulatory constraints on day-to-day farming earthworks, if the entire countryside is awash with floodwater.
- 3.26 Restrictions on earthworks associated with habitable structures (such as dwellings, business offices, or merchant's buildings), contaminated soil, or infrastructure such as roads and railways, is a different issue, and I support appropriate management of such earthworks in the Proposed Plan's resource management framework (where not already regulated by a relevant National Environment Standard or Regional Plan).
- 3.27 Restricting permitted earthworks to a maximum 500m³ per holding per year, risks capturing everyday farming earthworks in an unnecessary consent regime.
- 3.28 By contrast, a more nuanced approach would reflect that a single policy response is not appropriate in all situations. Earthworks that are ancillary to farming could be exempt from consideration, including:
- Crop cultivation and associated land preparation (including establishment of sediment and erosion control measures).
 - Harvesting of agricultural and horticultural crops (farming).

- Pasture maintenance (including construction and maintenance of subsoil drains).
- Maintenance and construction of facilities associated with farming activities, including, but not limited to, farm quarries, farm tracks, stock races, silage pits, offal pits, farm drains, farm effluent ponds, feeding pads, fertiliser storage pads, airstrips, helipads, post holes, fencing, drilling bores, stock water pipes, water tanks and troughs, the maintenance of on-farm land drainage networks, and erosion and sediment control measures;
- Burying of material infected by unwanted organisms as declared by the Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.

3.29 Most types of farm buildings (except for storage silos) are usually up to 10m high and bigger than 100m² floor footprint. These could include some barns and implement storage sheds are often 200 to 300m² footprint. Herd homes and calf-rearing sheds could easily be up to 1000m². Shelters for mustering yards in the order of 1,000 to 2,000 square metres.

3.30 Livestock mustering yards may include structures such as fences, ramps, gates and roofed structures for mustering, tagging and managing livestock (including animal pest and disease control). Other clusters of farm buildings may include farm implement sheds, fodder storage sheds and haybarns, fertiliser storage structures, calf rearing sheds, herd shelters, dairy sheds, shearing sheds and pump houses. These structures may be historically located in specific areas, and it may be uneconomic or impractical to shift any or all of these at replacement time, due to the need to maintain clusters of co-located activities in practical localities for access.

3.31 Restricting all farm buildings to a maximum permitted areas of 100m² and a maximum height of 8m triggers replacement and/or upgrading of such buildings to needing resource consent, with associated delays and costs. In my opinion, there is little or no environmental benefit in making farmers, plan administrators and decision makers alike go through the associated consent hurdles.

3.32 In my view, specific exclusion for accessory buildings, farm fences and other structures associated with day-to-day farming activities in general within the policy and rule framework, would promote more efficient implementation of the Proposed Plan. This could be along the lines of an additional bullet point in the rule table, thus:

...

This requirement shall not apply to buildings and structures used for agricultural, pastoral and horticultural activities.