

## Schedule 1: FFNZ Decisions Appealed, Reasons for the Appeals and Relief Sought

### OVERALL REASONS FOR THE APPEAL

- 1 Federated Farmers puts the overall reasons for the appeal as follows:
- Federated Farmers considers that the Thames Coromandel District Council (TCDC) decisions regarding the Proposed Thames Coromandel District Plan (TCPDP):
- Does not adequately address the economic consequences of the TCPDP on land owners
  - Does not adequately balance the four pillars of sustainability
  - Does not adequately provide for community and industry initiatives outside the rule framework
- 2 Federated Farmers seeks amendments both generally on the matters (raised above in paragraph 1) and more specifically by way of the relief described below.

### SPECIFIC REASONS FOR THE APPEAL

- 3 In particular, but without limiting the generality of the overall reasons for the appeal outlined in the paragraphs above, the TCDC decision does not appropriately address the specific issues identified below.
- 4 (i) **Subject matter and provision in the Proposed District Plan**
- 6.3.1(a)(d) now 6.3.1(b)(b)
- Federated Farmers made a submission seeking that policy 6.3.1(a)(d) be deleted. The respondent rejected our submission.
- (ii) **Summary of reasons for the appeal**
- Federated Farmers considers that the policy infers that buffers should be required around non significant indigenous vegetation whether it will provide a benefit or not.
- Federated Farmers considers that the application of buffers should be limited as a consent mitigation to when it can be shown as appropriate and will benefit the values of the indigenous vegetation that are to be protected.

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### (iii) **Relief Sought**

That 6.3.1(a)(d) now 6.3.1(b)(b) be deleted;

Or

6.3.1(a)(d) be amended to limit its application to only those circumstances that it can be shown to be appropriate;

Or

Such further or other relief that addresses the issues raised in this appeal point

### 5 (i) **Subject matter and provision in the Proposed District Plan**

6.3.1(e)

Federated Farmers made a submission seeking that Policy 6.3.1(e) be limited in its application to only where appropriate. The respondent rejected our submission.

### (ii) **Summary of reasons for the appeal**

Federated Farmers considers the Supreme Court decision, *Environmental Defence Society Incorporated V The New Zealand King Salmon Company Limited* [2014] NZSC 38, means that the use of the word avoid as a stand alone term or without any proviso means that any activity which does not avoid the effect can only be prohibited and cannot be remedied or mitigated.

We acknowledge that avoidance is limited to significant adverse effects, but consider that there may well be occasions where on balance the benefit of the activity outweighs the effects that may occur.

### (iii) **Relief Sought**

That 6.3.1(e) is amended so that the policy does not provide a blanket prohibition of any activity that may have significant adverse effects but allows an appropriate consideration of those effects;

Or

Such further or other relief that addresses the issues raised in this appeal point

### 6 (i) **Subject matter and provision in the Proposed District Plan**

9 Outstanding Natural Features and Landscape and 32 Outstanding Natural Features and Landscape Overlay

Federated Farmers made submissions on 9 Outstanding Natural Features and Landscape on 32 Landscape and Natural Character Overlay.

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The s42A Report adopted by the Decisions Report with further amendment accepted our submissions in part.

### (ii) **Summary of reasons for the appeal**

Federated Farmers primary submission was where outstanding landscapes have been identified on working productive farmland Federated Farmers expects the rules for protection of the outstanding landscapes to reflect that the farming activities have created that landscape and therefore are part of the values of the landscape. We consider that farming in these areas should be able to continue reflecting the underlying Zone provisions. The mapping identifies that some farms are wholly covered by an outstanding landscape overlay and as a result will have their normal farming activities, specifically routine earthworks and building unduly constrained. Federated Farmers does not consider that existing use rights offer sufficient protection and seek that farming activities are exempt and the underlying zone and district wide rules only apply.

The Respondent in the s42A report and Decisions Report agreed with our submission. However while *“holding reservations about naturalness of the farmland that has been included in the ONL overlay and in the absence of analysis that could have been considered”* adopted the Policies and maps as recommended by the s42A Report. (5.20)

In regards to the Rules in s32.1 the Respondent noted in the Decisions Report *“the Panel resolved that the most appropriate response would be to include provision in these rules to specifically provide for the ongoing nature of farming activities existing at the time decisions on the Plan are publically notified as a permitted activity.”* (5.28)

As a result amendments were made to Rule 2 Earthworks and Rule 2A Clearing Indigenous Vegetation by inserting *“it is part of a farming activity operational at 29 April 2016”* for earthworks and *“it is to maintain open pasture of a farming activity operational at 29 April 2016”*

We support these amendments however consider that Rule 2 needs to be extended to include the firewood rule 29.3.2.1(k) *“it is manuka (leptospermum scoparium) or kanuka kunzea ericoides) for domestic use within 18 months of felling”*, as this was included in the biodiversity chapter as permitted, being a normal farming activity.

Further Rule 1 limits building gross floor area to 50m<sup>2</sup> and height to 5m. Farm buildings such as haybarns, dairysheds shearing and implement sheds are a normal and necessary part of a farming operation. They also need to be replaced or new farm buildings are required for to ensure the farming activity can continue operating. The provisions in the Rural Zone for buildings for farming activities are permitted in regards to scale so long as less than 8m high and the total site coverage of buildings is less than 10%.

We consider that for consistency of the Decision Report that farm buildings (whether replacement or new) that are required for a farming activity operational at 29 April 2016 should be permitted.

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Further in relation to 32.3.1(c) restricting activities within 5m of a permanent waterbody needs to exempt normal farming activities including fencing, water intake structures, stream crossings and tracks to the stream crossings

### (iii) **Relief Sought**

That 32.3.1.1 is amended to include;

*It is a farm building required as part of a farming activity operational at 29 April 2016*

*They are part of a farming activity operational at 29 April 2016 when occurring within 5m of a permanent water body wider than 1m*

And

That 32.3.1.3 is amended to include;

*It is manuka (*leptospermum scoparium*) or kanuka (*kunzea ericoides*) for domestic use within 18 months of felling”,*

Or

Such further or other relief that addresses the issues raised in this appeal point

## 7 (i) **Subject matter and provision in the Proposed District Plan**

Provision 29.3 Rule 3 Clearing Vegetation in the Rural Area (now 29.3.2)

Federated Farmers made several submissions in relation to 29.3.3 including supporting the retention of 29.3.3.1(c) in relation of the harvesting of timber under a Sustainable Management Plan or Permit.

The Respondent in the Section 42A Hearing Report subsequently adopted in the Decisions has deleted 29.3.3.1(c) on the basis that matters considered under the Forest Act 1949 do not align with those matters to be considered under the RMA. Therefore the harvesting of indigenous forest with a Sustainable Management Plan or Permit under the Forest Act now requires a restricted discretionary consent.

### (ii) **Summary of reasons for the appeal**

Federated Farmers accepts that there are RMA matters that are not considered in the granting of a Sustainable Management Plan or Permit. However we consider that requiring a restricted discretionary activity is too onerous and that consideration as a controlled activity can appropriately address the matters to meet RMA requirements.

### (iii) **Relief Sought**

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That 29.3.2 be amended so that the harvesting of indigenous timber under a Sustainable Management Plan or Permit (under the Forests Act 1949) is a controlled activity.

Or

Such further or other relief that addresses the issues raised in this appeal point

### 8 (i) **Subject matter and provision in the Proposed District Plan**

29.3.3.1(e) now 29.3.2.1(d)

Federated Farmers made a submission on 29.3.3.1(e) supporting but seeking clarification of the provision which provided;

*The area to be cleared is dominated by exotic vegetation (e.g. forestry, domestic garden, pasture, horticulture);*

The s42A Report rejected our submission but amended the provision which was adopted by the Decisions Report to;

*The area to be cleared is existing domestic garden, or pasture, or horticulture that was established prior to notification of the District Plan on December 2013*

### (ii) **Summary of reasons for the appeal**

In our hearing evidence we stated as written if planting any domestic garden with indigenous plants or for that matter one indigenous plant after the 13 December 2013 will require a restricted discretionary resource consent to remove them. It is not considered that this is the intent of the provision. If it is considered necessary to have a provision explicitly excluding domestic gardens it should be for all domestic gardens not just those planted after a specific date.

### (iii) **Relief Sought**

That 29.3.3.1(e) now 29.3.2.1(d) is amended so that the removal of indigenous plants from a domestic garden is a permitted activity irrespective of when they were planted.

Or

Such further or other relief that addresses the issues raised in this appeal point

### 9 (i) **Subject matter and provision in the Proposed District Plan**

29.3.3.1 (j) now 23.3.2.1 (i)

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Federated Farmers made a submission generally supporting 29.3.3.1 subject to other submissions made on the rule. Included in its support was 29.3.3.1(j) which as notified provided;

*“It is for survey work, tracks, fences or existing formed roads, including 1m clearance either side”*

The s42A report proposed the amendment to

*It is a strip of no more than 3.5m wide for land survey work, tracks or fences*

The Decisions report adopted the s42A amendment

### (ii) **Summary of reasons for the appeal**

Federated Farmers accepts that there should be a maximum width to prevent inappropriate clearance of indigenous vegetation however in our hearing evidence we submitted that the width be amended to 4m for farm tracks. This is because farm machinery is often wider than 3.5m, track formation often needs to provide for drainage and further clearance on any corner has to be wider than the track to allow for turning vehicles.

We consider for these reasons that farm tracks of 3.5m to be impractical and as a result the majority, even simple straightforward tracks, would need to default to a restricted discretionary activity.

### (iii) **Relief Sought**

That 29.3.3.1 (j) now 23.3.2.1 (i) be amended to

*It is a strip of no more than 3.5m wide for land survey work, ~~tracks~~ or fences, or 4m for tracks*

Or

Such further or other relief that addresses the issues raised in this appeal point

## 10 (i) **Subject matter and provision in the Proposed District Plan**

30.3.2 Structures and buildings within 12m of the national grid

Federated Farmers made a submission on 30.3.2 seeking amendment to the restrictions on buildings that can be within 12m of the national grid .

The s42A Report adopted by the Decisions Report rejected our submission.

### (ii) **Summary of reasons for the appeal**

Federated Farmers submissions accepted the importance of protecting the electricity transmission infrastructure, however it is also important to ensure

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that controls do not capture activities which do not put the infrastructure at risk.

We have worked closely with Transpower to develop a set of provisions which protect the transmission line network from inappropriate land use activities while not constraining farming activities that do not put the network at risk. We supported the submission of Transpower and sought their recommendations were adopted by the Respondent.

No reason was provided in the s42A Report for rejecting our submission, however the Decision Report provided that the transmission line is critical for the supply of electricity to the District and that there is no alternative route.

We note that there are other Districts that also have a single line of supply and have adopted the approach submitted by Transpower.

We consider that the Respondents reasoning is flawed in that it does not provide how restricting building size further than that of the recommendation of Transpower will provide a greater degree of protection of the transmission line network.

### **(iii) Relief Sought**

That 30.3.2 be amended so that it allows an uninhabitable farm building or structure for farming or horticultural activities, excluding a milking/dairy shed or intensive farm building (not including ancillary structures) so long as complies with the following conditions – a minimum vertical clearance of 10m below the lowest point of the conductor associated with the National Grid line or demonstrate that safe electrical clearance distances are maintained under all National Grid line operating conditions and be at least 12 meters from a National Grid support structure.

Or

Such further or other relief that addresses the issues raised in this appeal point

### **11 (i) Subject matter and provision in the Proposed District Plan**

38.4.3.1(a) Boundary adjustment

Federated Farmers made a submission on 38.4.2.1(a) seeking the deletion of the reference to lots not changing by 5% and amending so that no lot can be smaller than the minimum lot size of the underlying zone.

The s42A Report accepted our submission in part which was adopted in the Decisions Report

### **(ii) Summary of reasons for the appeal**

Federated Farmers considers that the effect of boundary adjustments are minor in effect as no new lots are created as part of the adjustment. Boundary

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adjustments commonly occur as a result of the sale of part of a neighbouring property to enable a better economic use of the properties. We consider the only risk of boundary adjustments is to have a resultant lot less than the minimum lot size for the zone and minimum lot size should be the threshold mechanism of the rule

### (iii) **Relief Sought**

That 38.4.3.1(a) be amended so that no resulting lot from a boundary adjustment can be smaller than the minimum lot size of the underlying zone.

Or

Such further or other relief that addresses the issues raised in this appeal point

## 12 (i) **Subject matter and provision in the Proposed District Plan**

38.5.8 Subdivision creating one or more conservation lots

Federated Farmers made a submission supporting the provision of creating an economic incentive to protect indigenous biodiversity, but sought that the provision was extended to any area in the District that met the criteria as a significant natural area and had been ground truthed and not limited to the identified priority areas and should have the same status of restricted discretionary.

The Section 42A report adopted by the Decision Report rejected our submission

### (ii) **Summary of reasons for the appeal**

Federated Farmers understand that there are areas outside the Council identified priority areas that would meet the Significance Criteria for Significant Natural Areas in the Regional Policy Statement. We consider that better and more enduring protection of these areas occurs when the landowner is engaged and will to provide that ongoing protection. The economic incentive of providing conservation lots is a mechanism that can achieve this. We accept that there are matters that should and need to be considered by Council in providing for conservation lots and subsequent protection of Significant Natural Areas but consider that these can be adequately addressed as a restricted discretionary activity.

We consider any more onerous controls will act as a disincentive to provide the appropriate protection.

### (iii) **Relief Sought**

That 38.5.8 is amended to provide for conservation lots in any area in the District, not just those in Priority Areas, which can be shown to be a Significant Natural Area as per the Significance Criteria in the Regional Policy Statement as a restricted discretionary activity.

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Or

Such further or other relief that addresses the issues raised in this appeal point

### 13 (i) **Subject matter and provision in the Proposed District Plan**

38.6.9.1 Subdivision creating on or more additional lots

Federated Farmers made a submission see that provision 38.6.9.1 be a restricted discretionary activity rather than a discretionary activity

The S42A report adopted by the decisions report rejected our submission

### (ii) **Summary of reasons for the appeal**

We consider that there is no basis for having a different activity status for the creation of additional lots for the Rural Zone from any other Zone.

We do not consider that restricted discretionary any less onerous than discretionary but provides for clarity and certainty in regards to the matters that any consent application will be determined.

We consider that the matters to be considered in relation to subdivision are readily identifiable and therefore appropriate to be a restricted discretionary activity.

### (iii) **Relief Sought**

That 38.6.9.1 be amended to a restricted discretionary activity

Or

Such further or other relief that addresses the issues raised in this appeal point

### 14 (i) **Subject matter and provision in the Proposed District Plan**

38.7.14(a) Assessment standard, matters and criteria: Rural Zone

Federated Farmers submitted in support that the minimum average lot area for all lots (including any balance or residual lot) be 20 hectares.

The s42A Report did not amend 38.7.14(a) but the Decisions Report rejected our submission and amended 38.7.14(a) to

*Minimum lot area 20ha*

### (ii) **Summary of reasons for the appeal**

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The Decision Report 12 at 5.21 on Rural Subdivision states *“the s42A Report provisions have struck a fair and reasonable balance. There is very low risk of urban proliferation within the Rural Zone, and the provisions are sufficient to ensure that any proposal will have to demonstrate that its effects will be appropriate.”*

However at 5.32 the Decision Report provides a counter view that suggests that a minimum lot may be appropriate. The Decision Report does not reconcile the two views but determines that in the Rural Zone a minimum average lot should prevail in the Rural Zone.

We consider the minimum average lot size for subdivision will provide for better land use than the average lot size. 20 hectares in today farming systems is not a size to provide an economic return. Further 20 hectares is beyond the scope for most as a horticulture, lifestyle or holiday section is unlikely to be managed to its economic capacity and therefore a loss of the use of high quality soils

We consider that a minimum lot average provides not only flexibility but also a better mechanism to ensure the protection of high quality soils, rural character, and the open space feel than minimum lot size.

### (iii) **Relief Sought**

That 38.7.14(a) be reinstated to the notified version

*Minimum average lot area for all lots (including any balance or residual lot)  
- 20ha*

Or

Such further or other relief that addresses the issues raised in this appeal point

### 15 (i) **Subject matter and provision in the Proposed District Plan**

56.4.17.1 Minor Unit; One Dwelling per Lot

Federated Farmers made an overarching submission supporting Section 56 subject to other submissions seeking amendment. This overarching submission included support that One Dwelling Per Lot was a permitted activity subject conditions. This included properties within the Coastal Environment when the underlying Zone was Rural.

The s42A Report adopted by the Decisions Report has amended to exclude properties from the permitted activity rule and made the activity restricted discretionary

### (ii) **Summary of reasons for the appeal**

Federated Farmers considers it a reasonable expectation of a landowner to be able to construct a dwelling on a property. In making it restricted discretionary and the ability to decline consent undermines the presumption to make reasonable use of land.

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We accept that in the coastal environment there should be controls to minimise the effects on the coastal character but that this can be reasonable achieved by a controlled activity consent.

**(iii) Relief Sought**

That 56.4.17.1 Minor Unit; One Dwelling per Lot is amended to allow one dwelling per lot as a controlled activity.

Or

Such further or other relief that addresses the issues raised in this appeal point

**APPEAL ENDS**