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16 September 2016

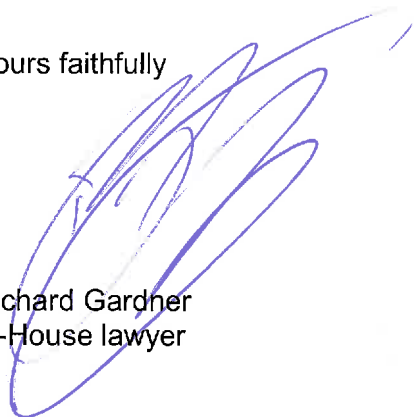
The Chief Executive
Auckland Council
Private Bag 92300
Victoria Street West
AUCKLAND 1142

Attn: Mike Wakefield

Re: Appeal to the High Court
Federated Farmers of New Zealand v Auckland Council

In accordance with the provisions of s 158 of the Local Government (Auckland Transitional Provisions) Act 2010, I enclose by way of service a copy of a Notice of Appeal to the High Court given under the provisions of that Act, against the Auckland Council's decision on the proposed Auckland combined plan (the "Proposed Auckland Unitary Plan").

Yours faithfully


Richard Gardner
In-House lawyer

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2016-404-

UNDER the Local Government (Auckland
Transitional Provisions) Act 2010

IN THE MATTER of an appeal under s 158 of the Act

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED

Appellant

AND AUCKLAND COUNCIL

Respondent

**NOTICE OF APPEAL AGAINST A DECISION OF THE
COUNCIL ON POINTS OF LAW**

16 September 2016

Federated Farmers of New Zealand
145 Khyber Pass
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Contact Person: Richard Gardner

1. **TAKE NOTICE** that Federated Farmers of New Zealand Incorporated (“Federated Farmers”) appeals to the High Court against a decision of the Auckland Council (“the Council”) upon the grounds that the decision is erroneous in law.

Introduction

2. This notice is given under the provisions of section 158 of the Local Government (Auckland Transitional Provisions) Act 2010 (“the Act”).
3. The decision of the Auckland Council appealed against is the decision on the Auckland Council’s proposed Auckland combined plan, as that plan is described in s 122 of the Act (“the Decision”) (“the Plan”).
4. Federated Farmers received notice of the Decision on 19 August 2016.
5. Federated Farmers made submissions on the originating matter and appeared before the Hearings Panel which heard submissions in the originating matter.

Background

6. On 30 September 2013 the Council notified its proposed Auckland combined plan, which it identified at the time as the Proposed Auckland Unitary Plan. The Council followed the process set out in Part 4 of Act, eventually notifying its decisions on submissions, notification which was received by Federated Farmers on 19 August 2016.
7. Federated Farmers appeals against part of the Decision, the decisions in relation to: Topic 019 (Natural Features, Landscape and Character); Topic 024 (Genetically Modified Organisms); and Topic 033/034 (General Coastal Marine Zone and other Coastal Zones).

Topic 019 (Natural Features, Landscape and Character)

Outstanding Natural Landscape Mapping

The Error of Law Alleged

8. The error of law alleged is that the Council erred in law in its Decision:

In Section 2.2.13 of the recommendations, where the Council came to a conclusion without evidence or one to which on the evidence it could not reasonably have come, when it found, in deciding submissions on whether the mapping of outstanding natural landscapes needed to be revisited on the basis of the Supreme Court's "*King Salmon*" decision,¹ that no changes should be made to the methodology and approach to the mapping of outstanding natural landscapes.

The Question of Law to be Resolved

9. The question of law to be resolved is:

Whether the Council should, in the light of the Supreme Court's "*King Salmon*" decision, have revisited the mapping of outstanding natural landscapes.

The Grounds of Appeal

10. The grounds of appeal are that:

- (i) In the "Overview" Section of its report of recommendations on Topic 019,² the Hearings Panel noted submissions which were made by a submitter, which were supported by Federated Farmers, which sought fundamental changes to the mapping of outstanding natural landscapes, to bring the policies and mapping in the Plan in to line so as to give effect to the New Zealand Coastal Policy Statement, and which pointed out how the *King Salmon* decision and its

¹ *Environmental Defence Society v Incorporated v The New Zealand King Salmon Company Limited*, [2014] NZSC 38 ("*King Salmon*").

² Report to Auckland Council - Hearing topic 019 - Natural features, landscape and character - July 2016.

implication for the Plan's mapping and policy approach were "at odds" with each other, by not allowing key elements of basic farming activity within areas of mapped outstanding natural landscapes.

- (ii) At Sections 2.2.13 and 2.2.14 of its report, the Hearings Panel expanded on its discussion of the matter in the Overview Section, noting the fundamental differences in approach between the two expert landscape architects involved, and noting that the approach of one would require a review of the methodology and approach to the identification of all outstanding natural landscapes.
- (iii) At Section 2.2.14 of its report, the Hearings Panel accepted that the mapped outstanding natural landscapes overlay affects properties and how activities on those properties may be undertaken, but said these controls on existing farming activities were limited and that the Panel had sought to ensure that at least existing farming activities are permitted.
- (iv) At Section 2.2.13 of its report, the Hearings Panel acknowledged the New Zealand Coastal Policy Statement and particularly Policies 11, 13 and 15 thereof and the implications of the *King Salmon* decision, referring to the requirement in those policies to avoid the adverse effects of activities on outstanding natural landscapes.
- (v) The recommendations made by the Hearings Panel have been accepted by the Council.³
- (vi) By providing for and allowing activities that will inevitably have adverse effects on outstanding natural landscapes, which is contrary to Policy 15 in the New Zealand Coastal Policy Statement, the Council has made an error of law.
- (vii) From this it follows that, if activities which make up the key elements of basic farming activity which are taking place within areas mapped as outstanding natural landscapes are not allowed because the areas qualify as outstanding natural landscapes, then the methodology and approach to the identification of all outstanding natural landscapes must be incorrect.

³ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 17 (page 18).

(viii) Accordingly, in deciding that the mapping of outstanding natural landscapes did not need to be revisited and that no changes should be made to the methodology and approach to the mapping of outstanding natural landscapes, the Council came to a conclusion without evidence or one to which on the evidence it could not reasonably have come.

Activities in Outstanding Natural Landscapes

The Error of Law Alleged

11. The error of law alleged is that the Council erred in law in its Decision:

In Section 2.2.13 of the recommendations, where the Council failed to take into account matters which it should have taken into account, when it found, in deciding submissions on farming activities in outstanding natural landscapes, that some forestry and buildings should be controlled as they may have adverse effects on landscape values.

The Question of Law to be Resolved

12. The question of law to be resolved is:

Whether the Council failed to take into account matters which it should have taken into account when it found, in deciding submissions on farming activities in outstanding natural landscapes, that some forestry and buildings should be controlled as they may have adverse effects on landscape values.

The Grounds of Appeal

13. The grounds of appeal are that:

- (i) In the "Overview" section of its report of recommendations on Topic 019,⁴ the Hearings Panel stated that:

⁴ Above at fn 2.

The New Zealand Coastal Policy Statement 2010 is also highly relevant in terms of the coastal environment. Section 62(3) of the Resource Management Act 1991 requires that the Unitary Plan must give effect to the New Zealand Coastal Policy Statement, and of particular note are Policies 13(1)(a) and 15(a) as they are directive, 'avoid' policies by virtue of their construction.

- (ii) Later in the Overview section, the Hearings Panel recorded that it had made some changes to the objectives and policies in the Plan, to make clear what adverse effects are to be avoided, and had also made some changes to the assessment tables and schedules to identify that some activities exist within these sensitive areas, and that their presence does not cause adverse effects.
- (iii) At Section 2.2.14 of its report, the Hearings Panel stated that some forestry and buildings are controlled as these are particular activities that may have adverse effects on natural character, features and landscape values, and that it is not the pastoral use of outstanding natural landscapes with which the policies are concerned about, but the natural aspects of the area.
- (iv) However, Policy 15(a) of the New Zealand Coastal Policy Statement applies only to protect natural features and landscapes of the coastal environment from "inappropriate" subdivision, use and development.
- (v) Further, in its *King Salmon* decision,⁵ the Supreme Court stated that "inappropriate" in ss 6(a), (b) and (f) of the RMA⁶ should be interpreted against the backdrop of what is sought to be protected or preserved. Section 6(b) of the RMA provides that outstanding landscapes are what is sought to be protected.
- (vi) The recommendations made by the Hearings Panel have been accepted by the Council.⁷
- (vii) Accordingly, in failing to recognise that Policy 15(a) of the New Zealand Coastal Policy Statement applies only to "inappropriate" subdivision, use and development and that "inappropriate" should be interpreted against the backdrop of what is sought to be protected or preserved, in this case productive farmland, the Council failed to take into account matters which it should have taken into account

⁵ Above at fn 1, at [105].

⁶ The Resource Management Act 1991.

⁷ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 17 (page 18).

when it found that some forestry and buildings in outstanding natural landscapes should be controlled.

Topic 024 (Genetically Modified Organisms)

Jurisdiction

The Error of Law Alleged

14. The error of law alleged is that the Council erred in law in its Decision:

At Section 2.2 of the recommendations, in that the Council accepted the Environment Court's decision in *Federated Farmers v Northland Regional Council*,⁸ that there is jurisdiction it to make provision for the control of the use of genetically modified organisms ("GMOs") through its Plan.

The Question of Law to be Resolved

15. The question of law to be resolved is:

- (i) Whether the Council applied the correct legal test in determining that there is jurisdiction for it to include the regulation of GMOs in the Plan.
- (ii) If not, whether the correct legal test for determining whether there is jurisdiction for the Council to include the regulation of GMOs in the Plan is something along the lines:

Is there a resource management purpose for controlling GMOs to achieve environmental standards which are other than those that are able to be specified by way of Hazardous Substances and New Organisms Act 1996 ("HSNO").

⁸ [2015] NZRMA 217; [2015] NZEnvC 89.

The Grounds of Appeal

16. The grounds of appeal are that:

- (i) In the "Overview" Section of its report of recommendations on Topic 024,⁹ the Hearings Panel accepts the authority of the Environment Court's decision in the *Federated Farmers* case, that there is jurisdiction for the Council to make provision for the control of the use of genetically modified organisms through its Plans, and adopts the Court's reasoning.
- (ii) However, the Hearings Panel makes no mention of the fact that, at the time of its hearing into GMOs, at the time of making its recommendations and at the time of the Council's decisions, the Environment Court's decision was under appeal in the High Court.
- (iii) The High Court decision on that appeal is now available, and it does not fully endorse the Environment Court decision. Indeed, it determines that the basis on which the Environment Court decision is founded, that either the RMA or HSNO needed to demonstrate express exemption from consideration of new organisms under the RMA before the RMA could be excluded from that consideration, was "overstated".
- (iv) The recommendations made by the Hearings Panel have been accepted by the Council.¹⁰
- (v) Accordingly, the Hearings Panel applied an incorrect test in determining that there is jurisdiction for the Council to include the regulation of GMOs in the Plan.
- (vi) In the case *Petone Planning Action Group Inc v Hutt City Council*,¹¹ the Environment Court considered whether designing and constructing a building development according to the Building Code was sufficient to decide a resource consent application, and found that it was. The Court found that there was no resource management purpose for controlling the building work to achieve any criteria other than those specified in the Building Code. The Court said that the RMA can govern matters within

⁹ Report to Auckland Council - Hearing topic 024 - Genetically Modified Organisms - July 2016.

¹⁰ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 21 (page 21).

¹¹ Environment Court decision W020/08, 2 May 2008.

the purview of the Building Act if a valid resource management purpose justifies the exercise of power under the RMA. In the case the Court found, at [218] that:

... there is no resource management purpose for controlling the building work to achieve performance criteria other than those specified in the building code.

The approach taken by the Environment Court in the case has seemingly been endorsed by the High Court in a subsequent appeal that was taken to that Court.¹²

(vii) Thus, the correct legal test for determining whether there is jurisdiction for a regional council to include the regulation of GMOs in its RPS would appear to be something along the lines:

Is there a resource management purpose for controlling GMOs to achieve environmental standards which are other than those that are able to be specified by way of HSNO.

It is considered that there is no such resource management purpose and that therefore there is no jurisdiction for the Council to include the regulation of GMOs in the Plan.

Section 32, Section 32AA & Section 32A

The Error of Law Alleged

17. The error of law alleged is that the Council erred in law in its Decision:

At Section 1.2 of the recommendations, in that the Council retained provisions which regulate the use of genetically modified organisms in the Plan, and that the provisions include controls on where they may be used and what controls should be imposed to avoid the release of them.

¹² *Petone Planning Action Group Inc v Hutt City Council*, CIV 2008-485-1112, High Court, Wellington, 22 September 2008, at [40].

The Question of Law to be Resolved

18. The question of law to be resolved is:

Whether the Council failed to take into account matters which it should have taken into account in determining that it would retain provisions which regulate the use of genetically modified organisms in the Plan, and that the provisions include controls on where they may be used and what controls should be imposed to avoid the release of them.

The Grounds of Appeal

19. The grounds of appeal are that:

- (i) In the "Introduction" Section of its "overview" report of recommendations on the Plan, and in the discussion of the "evaluation report" therein,¹³ the Hearings Panel states that, before notifying a proposed policy statement or plan, the Council is required to have prepared an evaluation report in accordance with s 32 of the RMA which must, generally, examine whether the proposed objectives of the Plan are the most appropriate way to achieve the purpose of the RMA, and whether the policies, rules and other methods of the Plan are the most appropriate way to achieve the objectives.
- (ii) The Hearings Panel goes on to state that it is required to include in its recommendations a further evaluation of the Plan in accordance with s 32AA of the RMA, but only for the changes that it recommends be made, and which is undertaken at a level of detail that corresponds to the scale and significance of the changes. The Hearings Panel adds that the entire hearing process and its own deliberations have constituted its review for the purposes of s 32AA and that the hearing sessions for each topic enabled the Panel to test possible amendments to the provisions of the Unitary Plan as notified.

¹³ Report to Auckland Council - Overview of recommendations on the proposed Auckland Unitary Plan - 22 July 2016: Section 2.2.

- (iii) The Hearings Panel states that its evaluation is based primarily on the Council's original section 32A report, any section 32AA evaluation provided during the course of the hearings, and the information and analysis contained in submissions, responses and questions, and supporting evidence presented to the hearings. It states that its evaluation is contained in the body of its recommendation report for each topic where changes are proposed to the Unitary Plan as notified, with a summary of the main changes it recommended contained in the Overview, which is part of, but not the full, evaluation.
- (iv) In its submissions on the Plan, Federated Farmers made the submission that:¹⁴

... the "section 32 evaluation" on the matter of genetic modification is grossly inadequate, to the point of being deliberately wrong.

- (v) The Hearing Panel's report of recommendations on Topic 024,¹⁵ makes no mention of it having given any consideration to the Council's obligations under s 32, or under s 32AA. Neither does the Hearing Panel indicate that it has had regard to Federated Farmers' challenge to the "section 32 evaluation" on the matter of genetic modification, as it is required to do under s 32A of the RMA.
- (vi) The Hearing Panel does not give any consideration to the relationship between the RMA and HSNO and to whether the Council should regulate GMOs in the Plan, given the role of HSNO in regulating GMOs and given also that the Hearing Panel specifically acknowledged that its discussion of the relationship between the RMA and HSNO related only to jurisdictional issues.
- (vii) Further, even having assumed that the Plan should regulate GMOs, the Hearing Panel does not give any consideration to the nature of the provisions that should be included in the Plan given the role of HSNO in regulating GMOs, and whether the provisions that have been included are the most appropriate way to achieve the purpose of the RMA.

¹⁴ Submission 6523-26.

¹⁵ Report to Auckland Council - Hearing topic 024 - Genetically Modified Organisms - July 2016.

- (viii) The recommendations made by the Hearings Panel have been accepted by the Council.¹⁶
- (ix) Accordingly, the Council failed to take into account matters which it should have taken into account in determining that it would retain provisions which regulate the use of genetically modified organisms in the Plan, and that the provisions include controls on where they may be used and what controls should be imposed to avoid the release of them.

The Credibility of Witnesses

The Error of Law Alleged

20. The error of law alleged is that the Council erred in law in its Decision:

At Section 3.2 of the recommendations, in that the Council specifically states that it did not rule on the credibility of the expert witnesses but then uses the "scientific contest" from those witnesses to conclude there was a scientific contest and uncertainty and that a precautionary approach was therefore necessary.

The Question of Law to be Resolved

21. The question of law to be resolved is:

Whether the Council: came to a conclusion without evidence, or one to which on the evidence it could not reasonably have come to; took into account matters which it should not have taken into account; and / or failed to take into account matters which it should have taken into account: in determining that it would not rule on the credibility of the expert witnesses but then proceeded to use the "scientific contest" from those witnesses to conclude there was a scientific contest and uncertainty and that a precautionary approach was therefore necessary.

¹⁶ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 21 (page 21).

The Grounds of Appeal

22. The grounds of appeal are that:

- (i) In section 3.2 of its report of recommendations on Topic 024,¹⁷ the Hearings Panel states that it heard evidence from a number of witnesses with the necessary scientific qualifications and records of experience to be considered as experts in this field and that it also heard from other expert witnesses in the fields of planning and economics who based their opinions on the evidence of those scientists. The Panel noted that there was some cross-examination of certain witnesses, which it summarised by saying that the scientific evidence and the policy conclusions that should be based on that science, were strongly contested both on the merits and in terms of whether certain witnesses lacked the necessary independence for their opinions to be treated as expert evidence.
- (ii) The Hearings Panel then went on to state that it was unnecessary to resolve the contest between the witnesses, on the basis that, at present, activities involving genetically modified organisms are conducted within laboratories or in controlled field trials, or are vaccines used under veterinary supervision, and that there is no current proposal for the general release of genetically modified organisms anywhere in the Auckland region.
- (iii) However, the Hearings Panel then went on to recommend that classifying the general release of genetically modified organisms as a prohibited activity is appropriate. The Panel stated that it:

... accepts the submissions of the Council and submitters in support of the Council's position submission that a precautionary approach is appropriate given the scientific contest about the nature and extent of the risks associated with the general release of new organisms into the environment.

- (iv) Thus it would seem that the Hearings Panel considers that the science contest supports the rule framework which it recommends, yet the rule framework includes the

¹⁷ Report to Auckland Council - Hearing topic 024 - Genetically Modified Organisms - July 2016.

- precautionary approach, an approach which is based around the concept of scientific uncertainty.
- (v) Yet the Hearings Panel specifically states that it did not rule on the credibility of the expert witnesses but then proceeds to use the "scientific contest" from those witnesses to conclude there was a scientific contest and uncertainty and a precautionary approach (over and above any decision that the Environmental Protection Authority might previously have made) was necessary.
 - (vi) Further, at the time it made its decisions, the Council was aware that Environmental Protection Authority had approved a genetically modified organism for release, and that the organism had been released. The particular application for the release had been received by the Environmental Protection Authority at the time the Hearings Panel held its hearing into the GMOs topic.
 - (vii) The recommendations made by the Hearings Panel were accepted by the Council, unchanged.¹⁸ Thus the recommendations made by the Hearings Panel have been accepted by the Council, despite the Council having received evidence which contradicted evidence which the Hearings Panel appears to have accepted.
 - (viii) In the circumstances, for the Council to not rule on the expert witnesses and to use the scientific contest debates as the reason for imposing a prohibited activity status for certain activities does not follow any logical finding on the evidence.
 - (ix) Accordingly, the Council: came to a conclusion without evidence, or one to which on the evidence it could not reasonably have come to; took into account matters which it should not have taken into account; and / or failed to take into account matters which it should have taken into account: when it determined that it would not rule on the credibility of the expert witnesses but then proceeded to use the "scientific contest" from those witnesses to conclude there was a scientific contest and uncertainty and that a precautionary approach was therefore necessary.

¹⁸ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 21 (page 21).

Inconsistency of Recommendations

The Error of Law Alleged

23. The error of law alleged is that the Council erred in law in its Decision:

At Section 4.2 of the recommendations, in that the Council specifically acknowledges that the use of prohibited activity status might be inefficient in some cases in requiring a plan change process to be undertaken, but it found that there was insufficient evidence to demonstrate that the present circumstances was such a case. The Council stated that an important consideration was that the evidence indicated that there are no current proposals for the general release of genetically modified organisms in the Auckland region, which it took as an indication that the likely timeframes for seeking to make such a general release are consistent with a reasonable timetable for a plan change.

The Question of Law to be Resolved

24. The question of law to be resolved is:

Whether the Council: came to a conclusion without evidence, or one to which on the evidence it could not reasonably have come to; and / or failed to take into account matters which it should have taken into account: in determining that there was insufficient evidence to demonstrate that the present circumstances was a case where the use of prohibited activity status would be inefficient in requiring a plan change process to be undertaken.

The Grounds of Appeal

25. The grounds of appeal are that:

- (i) In Section 4.1 of its report of recommendations on Topic 024,¹⁹ the Hearings Panel asks the question, if an activity were to be prohibited, does that raise issues of efficiency and timeliness in dealing with plan changes, and then it goes on to state, in Section 4.2, that the proposed provisions in the Plan, which classify the release of genetically modified organisms as a prohibited activity, would mean that if any such organism were to be approved for introduction and release by the Environmental Protection Agency, then there would need to be a plan change before that approval could be given effect.
- (ii) The Hearings Panel then went on to state that, while in some cases the use of prohibited activity status might be inefficient in requiring a plan change process to be undertaken, in the present circumstances it considered that there was insufficient evidence to demonstrate that this is such a case, with an important consideration being that the evidence indicated that there are no current proposals for the general release of genetically modified organisms in the Auckland region. The Panel added that this was an indication that the likely timeframes for seeking to make such a general release are consistent with a reasonable timetable for a plan change.
- (iii) Thus the Hearings Panel rationalised that the legislative burden is acceptable, on the basis that there are no GMOs that have currently been released and there are no such proposals are in the pipeline.
- (iv) Nevertheless, in relation to genetically modified veterinary vaccines, the Hearings Panel has recommended allowing the use of genetically modified veterinary vaccines as a permitted activity where they are not viable and their administration is a specific delivery dose supervised by a veterinarian, with any other use of genetically modified veterinary vaccines being a discretionary activity.

¹⁹ Report to Auckland Council - Hearing topic 024 - Genetically Modified Organisms - July 2016.

- (v) Yet there is an Equine Influenza veterinary vaccine which contains a viable genetic modified virus which at the time of the hearing had been approved for controlled release by the EPA, and which could be used, or needed for use, at any time. It is apparent from the background material that Council intended that this GMO be provided for as a permitted activity in the Plan.
- (vi) Further, as discussed in the preceding error of law, the Environmental Protection Authority has approved a genetically modified organism for release and the organism has been released.
- (vii) The recommendations made by the Hearings Panel were accepted by the Council, unchanged.²⁰
- (viii) Accordingly, the Council: came to a conclusion without evidence, or one to which on the evidence it could not reasonably have come to; and / or failed to take into account matters which it should have taken into account: in determining that there was insufficient evidence to demonstrate that the present circumstances was a case where the use of prohibited activity status would be inefficient in requiring a plan change process to be undertaken.

033/034 (General Coastal Marine Zone and other Coastal Zones)

The Activity Status of the Livestock Exclusion Rules in Coastal Zones

The Error of Law Alleged

26. The error of law alleged is that the Council erred in law in its Decision:

At Section 14.2 of the recommendations, where the Council found that most of the issues relating to livestock exclusion from the coastal marine area were resolved either at mediation or were agreed at the hearing, with the timeframes for the rules to take effect having been included and essentially agreed by the parties, and that Policy 21(d) of the New Zealand Coastal Policy Statement

²⁰ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 21 (page 21).

requires that stock be excluded from the coastal marine area within a prescribed timeframe.

The Question of Law to be Resolved

27. The question of law to be resolved is:

Whether the Council: came to a conclusion without evidence, or one to which on the evidence it could not reasonably have come to; and / or failed to take into account matters which it should have taken into account: most of the issues relating to livestock exclusion from the coastal marine area were resolved either at mediation or were agreed at the hearing, with the timeframes for the rules to take effect having been included and essentially agreed by the parties, and that Policy 21(d) of the New Zealand Coastal Policy Statement requires that stock be excluded from the coastal marine area within a prescribed timeframe.

The Grounds of Appeal

28. The grounds of appeal are that:

- (i) In Section 14.2 of its report of recommendations on Topic 033 and 034,²¹ the Hearings Panel records that most of the issues relating to livestock exclusion from the coastal marine area were resolved either at mediation or were agreed at the hearing. Later in the same section the Hearings Panel states that Policy 21(d) of the New Zealand Coastal Policy Statement requires that stock be excluded from the coastal marine area within a prescribed timeframe. The Hearings Panel went on to provide for livestock access to all of the coastal marine area as being a non-complying activity after 30 September 2020, earlier in the case of some areas.
- (ii) In its submission on the Plan, Federated Farmers made a submission point²² which requested that livestock access to the coastal marine area be provided for as a restricted

²¹ Report to Auckland Council - Hearing topic 033 and 034 - General Coastal Marine Zone and other coastal zones - July 2016.

²² Submission point 6523-130.

- discretionary activity, with various lead in times specified. In the evidence that was given on Federated Farmers behalf, it is stated that the task of preventing livestock access to the coastal marine area in the Auckland region is a huge one, which would better be resolved if the Council was to provide for the activity to be restricted discretionary, and work proactively with landowners to develop ways in which to prevent such livestock access.
- (iii) Yet, in relation to the provision for livestock access in the coastal marine area, the Mediation Joint Statement records that:

... Federated Farmers oppose this provision, disagreeing with Auckland Council, and wish to address details in evidence at the hearing.

- (iv) Further, Policy 21(d) of the New Zealand Coastal Policy Statement states that stock access to waterways in the coastal environment and the coastal marine area is to be regulated under that policy only when the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on the matters listed in the opening statements of the Policy. Thus the context of the Policy is such that Policy 21(d) only applies in cases where it is the stock access that is giving rise to the deterioration in water quality. Further, the Policy only requires only that priority be given to improving water quality, with Policy 21(b) providing that provisions are to be included in plans, as a matter of priority, to address improving water quality in areas where the water quality has deteriorated.
- (v) Indeed, the Council's evidence did not show that water quality deterioration in the coastal marine area in Auckland is brought about by livestock access. Indeed, in its evidence, the Council conceded that it did not hold any data to contradict one particular submitter's position that stock access is not causing environmental effects.
- (vi) The recommendations made by the Hearings Panel were accepted by the Council, unchanged.²³

²³ Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Section 27 (page 27).

- (vii) Accordingly, by finding that that most of the issues relating to livestock exclusion from the coastal marine area were resolved either at mediation or were agreed at the hearing, the Council has made an error of law by coming to a conclusion without evidence, or one to which on the evidence it could not reasonably have come to.
- (viii) The Council has also made an error of law, in its consideration of Policy 21 of the New Zealand Coastal Policy Statement, by failing to take into account matters which it should have taken into account, being the true purpose of Policy 21 of the New Zealand Coastal Policy Statement.

The Relief Sought

29. The relief sought by Federated Farmers is that:

- i) the appeal be allowed;
 - ii) this Court find that the Council erred in relation to the questions of law set out herein;
 - iii) this Court quash the Council's decisions;
 - iv) this Court direct the Council to reconsider its decisions and the Hearings Panel to reconsider its recommendations to the Council on submissions on the Plan in the light of its findings on the questions of law set out herein;
- and, without detracting from the more general relief set out in i) - iv) above, that:
- v) this Court direct the Council to make the following amendments to the Plan:

Outstanding Natural Landscape Mapping:

Revisit the policies and the mapping of Outstanding Natural Landscapes, to bring the policies and mapping in the Plan in to line so as to give effect to the New Zealand Coastal Policy Statement, and to the findings of the Supreme Court in *King Salmon*.

Activities in Outstanding Natural Landscapes:Activity Table D11.4.1(A6):

Provide for new forestry over 2 hectares in area in areas of outstanding natural landscape to be a permitted activity.

Genetically Modified Organisms:

Remove all reference to genetically modified organisms from the Plan.

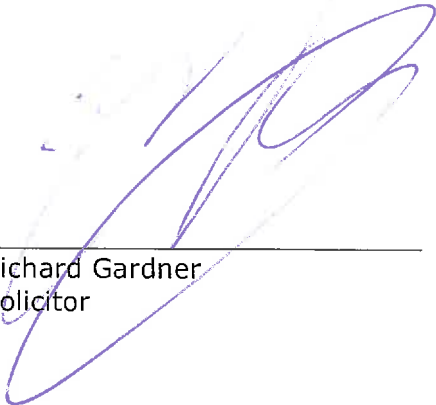
The Activity Status of the Livestock Exclusion Rules in Coastal Zones:Activity Table F2.19.1(A39):

Provide for livestock access in the coastal marine area to be a restricted discretionary activity.

and:

vi) costs.

Dated at Auckland this 16th day of September 2016



Richard Gardner
Solicitor

This document is filed by Peter Richard Gardner, solicitor for the Appellant, of Federated Farmers of New Zealand, whose postal address is Private Bag 92-066, Auckland 1142. The address for service of the Appellant is:

Federated Farmers of New Zealand
145 Khyber Pass
AUCKLAND

Documents for service on the filing party may be left at that address for service or may be—

- (a) posted to the solicitor at Private Bag 92-066, Auckland 1142; or
- (c) transmitted to the solicitor by fax to (09) 379-0782
- (d) emailed to the solicitor at: rgardner@fedfarm.org.nz