

# SUBMISSION

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To: Productivity Commission

Better Urban Planning Inquiry  
New Zealand Productivity Commission  
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The Terrace  
WELLINGTON 6143

Submission on: Better Urban Planning - Draft Report

From: Federated Farmers of New Zealand Incorporated

Date: 3 October 2016

Hearing: Federated Farmers of New Zealand wishes to be heard on its submission, should hearings be held

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## **SUBMISSION TO THE NEW ZEALAND PRODUCTIVITY COMMISSION ON BETTER URBAN PLANNING - DRAFT REPORT**

### **1 INTRODUCTION**

- 1.1 Federated Farmers of New Zealand Incorporated (“Federated Farmers” or the “Federation”) thanks the New Zealand Productivity Commission (“the Commission”) for the opportunity to provide submissions on its Better Urban Planning - Draft Report (“the Report”).
- 1.2 In regard to this submission, Federated Farmers has consulted its National Council and has engaged in some limited consultation with a proportion of its members in particular with members with properties in areas that are most relevant to the parts of the Report with which Federated Farmers is concerned.
- 1.4 Federated Farmers would welcome and appreciate the opportunity to discuss this submission in greater detail..

### **2. RECOMMENDATIONS**

- 2.1 That the proposals in the Report be proceeded with, subject to the recommendation that the submissions made herein be taken into account in preparing a final “Better Urban Planning” report.

### **3. GENERAL COMMENTS**

- 3.1 The broad purpose of this submission is to give the general support of Federated Farmers to the content of the Report, which is aimed at developing better urban planning. It is understood that the purpose of the Report is to deliver a range of alternative models for the urban planning system and set up a framework against which current practices and potential future reforms in resource management, planning and environmental management in urban areas might be judged.
- 3.2 Federated Farmers agrees that the Report successfully and accurately reflects on the review of New Zealand’s urban planning system which the Commission has undertaken, and which aims to identify, from first principles, the most appropriate system for allocating land use through the planning system, in order to support desirable social, economic, environmental and cultural outcomes. In turn, it is understood that the review the Commission is undertaking sets out to:
  - identify options to align the priorities of actors and institutions within these regimes, where possible;
  - improve economic, environmental and community outcomes through urban planning; and
  - to deliver optimal efficiency in the delivery of these outcomes.
- 3.3 Further, it is understood that the review:
  - includes identifying the most effective methods of planning for and providing sufficient urban development capacity;

- looks beyond the current resource management and planning paradigm and legislative arrangements to consider fundamentally alternative ways of delivering improved urban planning, and subsequently, development;
  - considers ways to ensure that the regime is responsive to changing demands in the future, how national priorities and the potential for new entrants can be considered alongside existing local priorities and what different arrangements, if any, might need to be put in place for areas of the country seeing economic contraction rather than growth;
  - includes, but is limited to, the kinds of interventions and funding/governance frameworks that are currently delivered through legislation.
- 3.4 It is understood that, to this end, the Report covers background, objectives, outcomes and learnings from the current urban planning system in New Zealand, examines best practice internationally and in other cases where power is devolved to a local level in New Zealand, and looks at alternative approaches to the urban planning system.
- 3.5 Perhaps the first point to make is that the Report is of limited applicability to the rural areas of the country, although where that applicability is relevant, it is important. As was noted in earlier submissions on some of the preliminary documents that invited feedback and submissions on a proposed national policy statement on urban development capacity, the main issue that rural areas have with urban development is at the interface between urban areas and rural areas.
- 3.6 What Federated Farmers has asked for to address the issues that arise at this interface is the inclusion, where appropriate, of an objective which would ensure rural production activities on land adjacent to urban areas that are subject to ongoing development and change that is urban in nature, is able to continue. We have also asked for a policy that implements this objective by ensuring that adequate buffer zones are provided between newly developing urban areas and adjacent rural areas, so as to avoid any development and change taking place in urban areas compromising the safe and efficient operation of existing rural production activities or industry.
- 3.7 It should also be recognised that urban development can adversely impact food production by reducing the proportion of soil available for productive use. This loss can occur at both a large scale (e.g. loss of farm land) and small scale (e.g. small scale vegetable production). While the nature of the underlying soil resource is only one factor contributing to the productivity of that soil, and only one of the many values to be considered in the planning process, the productivity of the soil resource and the need for communities to provide for their own food production should nonetheless be a factor considered in respect to urban development, particularly when the soil resource is highly productive.
- 3.8 A related point is that rural towns and villages play an important role in supporting rural production activities, as well as those who are involved in rural production activities. Thus an issue that arises with the growth of these rural towns and villages is that the 'urbanisation' of these towns and villages which can sometimes accompany their growth can result in the loss of traditional rural services. Federated Farmers want to see that the 'urban' type growth of these towns and villages does not serve to displace the services industries that exist in those towns and villages that support rural production activities in the rural areas. That said, it is worth recording that the increasing range and diversity of services in rural areas that accompanies urban intensification can provide for economic sustainability in those areas, and can underpin the farming operation itself; for instance a small scale commercial operation

or bed and breakfast enterprise can assist the economics of the primary farming business.

- 3.9 Noting that one of the aims of the inquiry was to find out what different arrangements, if any, might need to be put in place for areas of the country seeing economic contraction rather than growth, it is of concern that the Report is focussed largely if not entirely on urban areas that are growing, with little said about areas of the country, mainly in the less populated parts of the country, that are in decline. Federated Farmers considers that the Report could usefully give better consideration to some of the issues faced by urban parts of the country that are facing population decline.
- 3.10 Nevertheless, Federated Farmers considers: that the Report is very thorough in addressing urban planning needs in areas of the country that are growing rapidly; that the Report provides an easily assimilable explanation of the problems with current urban planning; and that the Report makes a number of considered findings and recommendations. In particular, Federated Farmers notes a key finding, at Chapter 7.1, that: *“The [current] planning system shows considerable evidence of unnecessary, excessive and poorly-targeted land use regulations.”* Federated Farmers agrees with this, as well as with most of the other findings and recommendations in the Report.
- 3.11 Most of what Federated Farmers has to say about the Report concerns the discussion in the Report about the Resource Management Act (RMA). The concern that Federated Farmers has in this respect is to see that the changes that are recommended to be made to the RMA to better enable good urban planning do not serve to act against the best interests of rural areas of the country.

#### **4. SPECIFIC COMMENTS**

##### **4.1 Growth of towns and villages**

- 4.1.1 Growth in large metropolitan areas, and in Auckland in particular, is not confined to those metropolitan areas, indeed in Auckland’s case part of the growth strategy that is included in the Proposed Auckland Unitary Plan is to provide for some 30 – 40 percent of the growth that is expected to take place in greater Auckland to occur in Auckland’s rural areas, mostly in towns and villages.
- 4.1.2 As is discussed in the General Comments section above, growth in Auckland’s rural areas does bring about some planning challenges, in particular the challenge of ensuring that important rural services that are based in those towns and villages are not driven away by the ‘urbanisation’ of those towns and villages. Often areas of ‘countryside living’ are located on the outskirts of towns and villages, and ensuring there is sufficient provision of these to meet demand is also a challenge that seems sometimes to be ignored.
- 4.1.3 Federated Farmers considers that metropolitan urban growth into rural areas should be steered towards those locations where the growth will cause the least disruption to rural production activities, and that growth of towns and villages outside metropolitan areas should be designed so as to cause as little disruption as possible to the rural areas in which those towns and villages are located.

##### **4.2 Reverse sensitivity**

4.2.1 It is Federated Farmers' experience that reverse sensitivity issues inevitably arise when urban uses of land displace rural uses of that same land. Federated Farmers wishes to see that the Report properly addresses reverse sensitivity issues.

4.2.2 Thus Federated Farmers is particularly concerned to see that areas of productive land adjacent to areas that are designated to become urbanised are protected from the reverse sensitivity effects that might arise from new activities taking place in such areas. The term reverse sensitivity is used to refer to the situation that arises when a sensitive activity, such as residential housing, establishes in the vicinity of a different, but legitimate, activity, particularly if it becomes necessary to restrain the existing activity in order to accommodate the new, sensitive, activity. It is considered, in the case of some urban activities, residential activity in particular, becoming established in rural productive areas, that the effects can be addressed by the provision of adequate buffer zones by the developers of the new urban activity, between the new urban activity and the established rural production activity.

#### 4.3 Distinctions between the built and natural environment

4.3.1 The Report notes that different regulatory approaches are required between the natural environment and the built environment, with the natural environment needing a clear focus on setting standards that must be met, while the built environment requiring assessments that recognise the benefits of urban development and allow change. It is noted in the Report that current statutes and practice blur the two environments, provide inadequate security about environmental protection and insufficient certainty about the ability to develop within urban areas.

4.3.2 The Report suggests that, rather than attempting to regulate these different issues through the same framework, a future planning system should clearly distinguish between the natural and built environments, and clearly outline how to manage the interrelationship between the two.

4.3.3 The difficulty that Federated Farmers has with the analysis is that it seems, after careful reading, that the distinctions are intended to apply in urban areas only. However, case law has established that "naturalness" runs in a spectrum from "pristine" at the one end, to heavily modified environments at the other. Thus even built up areas in urban settings have a degree of "naturalness", and this would seem to be the issue that the Report is attempting to address.

4.3.4 From this explanation of "naturalness", it is readily apparent that there should also be a distinction drawn between the "truly natural environment" and the "modified natural environment" in rural areas as well. The same concerns about inadequate security about environmental protection and insufficient certainty about the ability to use and develop exist in rural areas just as they exist in urban areas, although they manifest themselves differently.

4.3.5 Federated Farmers would seek to see that any change that might be made to better distinguish the built and natural environments in urban areas takes into account the need to better distinguish the "truly natural environment" and the "modified natural environment" on productive rural land.

#### 4.4 Restraining the approaches to land use regulation

4.4.1 Federated Farmers strongly agrees with the sentiment expressed in the report, that a future planning system should only apply rules where there is a clear net benefit,

where the link to externalities is clear, and where alternative approaches are not feasible.

4.4.2 Federated Farmers considers that this aspect of the Report is, again, as equally applicable to rural planning and development as it is to planning for development in urban areas.

#### 4.5 More adaptable regulatory change

4.5.1 The discussion on developing a system whereby changes could be made automatically to plan provisions and land use regulations, instead of undergoing a full RMA Schedule 1 process, is generally supported. It is considered that it would be more efficient if the planning system was to provide for a larger share of land use rules to change automatically in response to pre-identified, objective triggers.

4.5.2 However, while this may be feasible in urban situations, the position in rural areas is more difficult. The example postulated, whereby land use rules could be linked to predetermined environmental standards such as nutrient levels in rivers increasing beyond particular levels, when more stringent controls could be “switched on”, is made more difficult because it is not particularly easy to establish what nutrient levels in rivers actually are, and what the cause of excessive nutrient levels is. For example, nutrients applied to land which leach into the soil may take many years to reach rivers, at which time it would be far too late for it to be useful to “switch on” more stringent controls.

4.5.3 On the other hand, it is possible under the present planning regime to have controls that kick in when certain events take place, for example reduced water takes may apply in dry spells, when water levels in rivers reach a certain flow threshold.

4.5.4 Nevertheless, the development of a planning system that is more adaptable to changing circumstances is supported by Federated Farmers.

#### 4.6 Making the RMA processes more fit for purpose

4.6.1 At many points through the Report, various criticisms are made of the RMA processes, and various suggestions are made as to how these shortcomings might be addressed.

4.6.2 The first point to note is that Federated Farmers agrees that the planning system lacks responsiveness and is not well set-up to deal with the change and unpredictability. The Federation agrees that the decision-making processes to change land use rules are slow and uncertain, which is in part due to the multiple avenues open to relitigate matters through the courts. It is agreed that change to the RMA is needed in this respect.

4.6.3 However, while Federated Farmers was pleased to be able to support many of the changes to the RMA proposed in the Resource Legislation Amendment Bill which is currently before Parliament, there were a number of items in the Bill which related directly to council decision making processes under the RMA, which Federated Farmers was not able to support, in particular: the powers that the Bill proposed to provide by way of Ministerial intervention in decision making processes; and the provisions relating to iwi participation, which were seen as undemocratic. The Commission is invited to review Federated Farmers’ submission on the Parliament website.

- 4.6.4 One of the matters raised in the Report relates to consultation, and the comment is made that the planning system tends to be reactive to the views of well-resourced and mobilised groups, rather than responsive to the wishes of the majority. While this may or may not be correct, Federated Farmers sees as large a problem in that some councils, particularly smaller councils, are liable to capture by staff with “agendas”, particularly in cases where individual staff members are ideologues of one sort or another. Federated Farmers suggests that a system of checks and balances needs to be incorporated into the resource management system in order to try and counteract this. This might include more ‘front-end’ guidance and more robust section 32 reports.
- 4.6.5 Another matter relates to the recommendation that a permanent Independent Hearings Panel be established to help councils ensure their plans meet legal requirements. Federated Farmers is supportive of this recommendation. It is noticeable that there has been a move by many councils towards using independent hearings panels, in part or in whole, to make recommendations or decisions on their plan proposals.
- 4.6.6 The Report envisages a planning system which includes the introduction of a permanent Independent Hearings Panel, narrower notification criteria, and more limited abilities to appeal council decisions. In this context, Federated Farmers considers that the process that was used to develop the Auckland Unitary Plan was generally successful, particularly in that there was an Independent Hearings Panel which encouraged the use of collaborative processes to resolve disputes, and that the Panel was empowered to make recommendations only, with the actual decisions being made by the Council itself.
- 4.6.7 In this context, Federated Farmers agrees with the proposition that is advanced in the Report; that the best decisions about resource management matters are made through democratic processes, with decisions on policy matters being made by councils, and not by the Courts.
- 4.6.8 As regards the role of the Environment Court, Federated Farmers considers that provision should be made for appeals from council decisions which can be made on points of law only, to be heard by the Environment Court, rather than the High Court. This is because of the greater experience the Environment Court has compared to the High Court in dealing with resource management matters. Otherwise, Federated Farmers agrees with the proposals advanced in the Report regarding the role of the Environment Court. The matter of costs being awarded by the Environment Court is discussed in the Report, and has become an issue of concern for Federated Farmers, with the Court appearing to be very erratic in its awarding of costs in plan appeal cases. It may be that consideration should be given to removing the ability of the Courts to award costs in plan appeal cases, other than in cases where one or other party is unreasonable in their behaviour.
- 4.6.9 There is mention made in the Report about environmental enforcement, and the role of councils in that regard. The Report is critical of the performance of regional councils, with monitoring efforts seen as under resourced and suffering from political interference. Two options are offered to improve the situation: expansion of the role of the Environmental Protection Authority (EPA); or increasing the oversight of council monitoring and enforcement activities.
- 4.6.10 Federated Farmers is aware that the Ministry for the Environment is preparing a comprehensive report on council compliance, monitoring and enforcement, which is due to be released shortly. The Commission could usefully review that report as it

continues the development of its position on council compliance, monitoring and enforcement activities.

- 4.6.11 One point to note in this regard, and a point which is often overlooked, is that compliance, monitoring and enforcement is carried out in pursuit of the purpose of the RMA, being sustainable management, and is not an end in itself. The RMA provides that some decisions on enforcement are to be made by individuals who are appointed enforcement officers, with other decisions being made by the council itself. In this context, it can be readily seen that the “political interference” that is alleged to occur in some enforcement decisions is far fetched. In Federated Farmers experience, the bias that can be shown when enforcement decisions are made at council officer level is palpable.
- 4.6.12 Nevertheless, Federated Farmers considers that decisions which could result in the criminal prosecution of individuals should be made by an agency independent of councils, either the EPA or the Police. Federated Farmers has also made submissions to the Law Commission on its review of pecuniary penalties, suggesting that a pecuniary penalties regime be introduced into the RMA, with the criminal prosecution option being reserved for the most serious cases, and that in these cases intent would need to be shown. It is of on-going concern to the Federation that RMA offences are considered to be serious Category 3 criminal offences, but at the same time they are strict liability offences, in some cases with very low thresholds of proof being required in order to demonstrate that an offence has occurred.
- 4.6.13 Federated Farmers does not necessarily agree that the planning system has an inherent status quo bias and risk aversion that reflects an overemphasis in the implementation of the RMA on managing or avoiding adverse effects, as discussed in Finding 7.7. While that thesis may sit uncomfortably with the dynamic nature of urban environments, it needs to be remembered that the adverse effects of urban environments are often felt on adjacent rural land.
- 4.6.14 One good example is with stormwater runoff from urban development, which is normally directed to a nearby stream. Unless adequately mitigated, these streams then become more prone to flooding, which in turn leads to an increase in the risk of flooding on rural land downstream from the urban development. Federated Farmers considers that great care needs to be taken to ensure that something which is actually good planning practice when considered in a broader context is not seen as risk averse planning practice when it is considered in just in the context of an urban setting.

#### Funding mechanisms

- 4.7.1 Mention is made in the Report about the need for better funding tools for local authorities, with a number of commentators having argued that more far-reaching changes to local government funding sources being needed, including replacements for, or supplements to, the existing rating system. Federated Farmers strongly supports a review being undertaken of the funding mechanisms available to local authorities.
- 4.7.2 Federated Farmers has long argued that the present property value based rating system is highly inequitable, and needs to be replaced. Farmers pay very high rates because of the value of their properties in comparison to the value of commercial and residential properties in urban areas, yet the location of their farms means that farmers are usually far removed from the services that councils offer, so have little access to them.

- 4.7.3 In response to the invitation for evidence from stakeholders on replacements for, or supplements to, the existing rating system, it is noted that Federated Farmers has advocated for an increase in the proportion of roading costs covered by road user revenue (as opposed to rates) and a portion of the government's GST or income tax to be shared with local authorities. In this same context, though, Federated Farmers is strongly opposed to resource charges, sometimes known as 'resource rentals', being used to supplement council incomes, as has been suggested by Local Government New Zealand, in its recently released report, *Planning for our Future*.

## **5. ABOUT FEDERATED FARMERS**

- 5.1 Federated Farmers of New Zealand is a primary sector organisation that represents farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers.
- 5.2 The Federation aims to add value to its members' farming business. 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.