



PROACTIVE RELEASE COVERSHEET

Minister	Hon David PARKER	Portfolio	Minister for the Environment
Minister	Hon Damien O'CONNOR	Portfolio	Minister of Agriculture
Name of package	Resource Management (Stock Exclusion) Amendment Regulations 2023	Date to be published	17 October 2023

List of documents that have been proactively released

Date	Title	Author
1 September 2023	Proactive release coversheet - Resource Management (Stock Exclusion) Amendment Regulations 2023	MfE and MPI
24 August 2023	Cabinet paper - Resource Management (Stock Exclusion) Amendment Regulations 2023	MfE and MPI
30 August 2023	Cabinet Economic Development Committee Minute of Decisions: Resource Management (Stock Exclusion) Amendment Regulations 2023 (DEV-23-MIN-0201)	Cabinet Office
22 August 2023	Letter to the Chair of Otago Regional Council seeking their agreement in relation to the Upper Taieri Scroll Plain	Office of the Minister for the Environment and Office of the Minister for Agriculture
24 August 2023	Response letter from the Chair of Otago Regional Council in relation to the Upper Taieri Scroll Plain	Office of the Chairperson of Otago Regional Council

Information redacted

There are no redactions proposed

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Office of the Minister of Agriculture

Office of the Minister for the Environment

Chair, Cabinet Economic Development Committee

Resource Management (Stock Exclusion) Amendment Regulations 2023

Proposal

- 1 This paper seeks agreement to the draft Resource Management (Stock Exclusion) Amendment Regulations 2023 (Amendment Regulations) and authorisation to submit the Amendment Regulations to the Executive Council.
- 2 The proposed amendments to the Resource Management (Stock Exclusion) Regulations 2020 (Stock Exclusion Regulations or Regulations) seek to enable more flexibility for lower intensity farming.
- 3 This paper also signals our intention to seek further advice on transitioning the Regulations into a new legislative instrument in the longer term.

Relation to government priorities

- 4 The Stock Exclusion Regulations are a core part of the Government's commitment to improving freshwater health (including wetland protection) through the *Essential Freshwater* work programme [CAB-18-MIN-0296].
- 5 The Regulations were made under the Resource Management Act 1991 (RMA). The Government's reform of the resource management system includes replacing the RMA with the Natural and Built Environment Act 2023 (NBA). Under the NBA, the Regulations will be transitioned into the National Planning Framework in their current form.

Executive Summary

- 6 The Stock Exclusion Regulations were gazetted in August 2020 under section 360(1)(hn) of the RMA as part of the *Essential Freshwater* regulatory package, and control the access of cattle, pigs and deer to water bodies. Although amendments were made in November 2022, the map of low slope land (incorporated by reference into the Regulations) still captured some areas of lower intensity farming where it is not cost effective to exclude stock from waterways.
- 7 Public consultation on two proposals to address this issue occurred from 19 June to 16 July 2023. Feedback did not indicate strong support for the proposals. Consequently, we do not propose adopting either, as both presented challenges. We are also limited in the changes that we can make under section 360(1)(hn) of the RMA.
- 8 We therefore propose to:
 - 8.1 amend the Regulations to create an exception for the Upper Taieri Scroll Plain, on the basis that the Otago Regional Council (ORC) has indicated it intends to implement a suitable management plan to manage grazing. The exception would be to the requirements for:

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- 8.1.1 excluding non-intensively grazed beef cattle and deer from lakes and wide rivers on low slope land (regulations 14 and 15), and
- 8.1.2 excluding all stock from natural wetlands (regulations 16, 17 and 18)
- 8.2 amend the Regulations to provide some lower intensity farming with additional flexibility, by creating an exception to the definition of low slope land where those arrangements include a limitation on the number of stock that may be grazed on the land, for any land:
 - 8.2.1 subject to a concession document granted under Part 3B of the Conservation Act 1987 for the purpose of grazing stock on public conservation land, or
 - 8.2.2 subject to a pastoral lease, occupation licence, special lease or discretionary pastoral activity, within the meaning of the Crown Pastoral Land Act 1998
- 8.3 address technical issues with the Regulations to:
 - 8.3.1 clarify that low slope land does not include land that exceeds 10 degrees in slope despite it being included in the map of low slope land, and is to be determined by measuring the slope over any 20-metre distance of the land, and
 - 8.3.2 update the definition of a permanent fence to allow for any type of permanent fence that achieves the purpose of excluding stock from a waterway.
- 9 We seek your final agreement to these policy decisions, and authorisation to submit the Amendment Regulations to the Executive Council (attached at **Appendix 3**).

Background

- 10 In June 2018, Cabinet approved the *Essential Freshwater* work programme [CAB-18-MIN-0296] in order to:
 - 10.1 stop further degradation of New Zealand's freshwater resources
 - 10.2 start making immediate improvements so that water quality is materially improving within five years, and
 - 10.3 reverse past damage to bring New Zealand's freshwater resources, waterways and ecosystems to a healthy state within a generation.
- 11 The *Essential Freshwater* regulatory package was gazetted in August 2020 and came into effect on 3 September 2020. This included the Stock Exclusion Regulations, which control the access of cattle, pigs and deer to water bodies.
- 12 The Regulations were created under section 360(1)(hn) of the RMA, which enables the development of regulations for the purpose of excluding stock from water bodies.

Recent changes to the Regulations and remaining issues with the map of low slope land

- 13 In November 2022, Cabinet agreed to changes to the map of low slope land [ENV-22-MIN-0051] to improve how it identifies low slope land and to avoid capturing lower intensity farming in the high country. This map determines where non-intensively grazed¹ beef cattle and deer need to be excluded from water bodies on low slope land,² and the changes responded to feedback that the map required modification to support effective implementation.
- 14 Even with the above changes, Cabinet noted that the map of low slope land may still capture areas of lower intensity farming; and that at lower stocking rates, the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for significantly higher costs [ENV-22-MIN-0051]. Therefore, Cabinet agreed to:
 - 14.1 develop an exception to the requirement excluding beef cattle and stock³ from water bodies for farms that met a threshold or definition for lower intensity farming, even where these are captured by the map of low slope land, and
 - 14.2 undertake further consultation to determine the correct thresholds and measures to underpin the exception [ENV-22-MIN-0051].
- 15 Cabinet noted that this exception would not affect any other requirement to exclude stock (including where beef cattle and deer are intensively grazed, or where farm planning processes determine it is appropriate in the circumstances). Cabinet also noted that an exception may be inappropriate in some circumstances, for example where particularly sensitive water bodies are present [ENV-22-MIN-0051].

Consultation

- 16 In June 2023, Cabinet subsequently agreed to release a discussion document [ENV-23-MIN-0014] seeking feedback on:
 - 16.1 excepting lower intensity farming from the map of low slope land, by either:
 - 16.1.1 defining lower intensity farming for the purpose of an exception to the map of low slope land, based on a threshold of stock units per hectare, or
 - 16.1.2 using certified freshwater farm plans to manage stock exclusion for lower intensity farming on low slope land, once such plans become available.
 - 16.2 applying any of the above to requirements to exclude stock from natural wetlands,⁴ and

¹ 'Intensively grazing' is defined in the Regulations as break feeding, grazing on annual forage crops, or grazing on pasture that has been irrigated with water in the previous 12 months.

² **Appendix 1** provides a brief overview of the Regulations.

³ Beef cattle and deer on low slope land; all stock for natural wetlands of 500 square metres or more.

⁴ 'Natural wetlands' include those that that: are identified in regional or district plans; support threatened species described in the National Policy Statement for Freshwater Management 2020; and are on low slope land that is 0.05 hectares or more.

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- 16.3 addressing other technical issues.
- 17 Public consultation on proposals to address remaining issues with the map of low slope land took place from 19 June to 16 July 2023, and 76 written submissions were received.
- 18 The primary sector generally supported the freshwater farm plans option (paragraph 16.1.2) as an alternative to the map of low slope land, although some supported the use of a stocking rate exception (paragraph 16.1.1).
- 19 Treaty partners and Environmental NGOs expressed a preference for keeping livestock out of water bodies and not making changes at this time. Their concerns included that the proposals would neither provide for Te Mana o te Wai nor achieve the objectives of the *Essential Freshwater* reforms.
- 20 Almost all regional councils opposed the stocking rate option (paragraph 16.1.1) due to the difficulty of compliance monitoring – stocking rates are difficult to observe as they vary over time and depend on a number of factors, such as the age or sex of the animals.
- 21 Some regional councils identified freshwater farm plans as an appropriate alternative that provided more flexibility. However, other councils expressed concern around the capacity and capability of advisers within their region, and issues with the timing of the freshwater farm plans rollout,⁵ which could create delays in implementing stock exclusion measures.
- 22 Overall, feedback indicated the map of low slope land is an imperfect, but useful, tool for managing stock access to water bodies. This feedback has given us a better understanding of the extent of the remaining issues with the map, and the challenges associated with addressing them. We believe the map should be retained (with some exceptions) to provide some lower intensity farming situations with additional flexibility.
- 23 Submitters suggested a range of alternative options for addressing the issue of the map of low slope land (eg a consenting process). While many of these options have merit, the design of s360(1)(hn) of the RMA does not enable them. Therefore, we have sought advice on options to transition the content of the Stock Exclusion Regulations to another legislative instrument over the longer term (discussed further below), and note this would be subject to future Cabinet decisions.

Policy

- 24 Having considered feedback received through consultation, we have taken policy decisions (detailed below in paragraphs 26–47) and instructed the Parliamentary Counsel Office (PCO) to draft the Amendment Regulations as authorised by Cabinet [ENV-22-MIN-0051].
- 25 This paper seeks both policy decisions and authorisation to submit the Amendment Regulations to the Executive Council.

⁵ The freshwater farm plan rollout is scheduled to be phased in region by region over the coming years. Full regional rollout is expected to be completed by the end of 2025. Farms operators will also have 18 months from the commencement date of the freshwater farm plan system in their region or area to submit a freshwater farm plan for certification.

Providing lower intensity farming with additional flexibility in the short term

- 26 While we consulted on options to except lower intensity farming more broadly (outlined in paragraphs 16.1–16.2), we do not propose to do so at this time. These options presented challenges in terms of identifying lower intensity farming where an exception is genuinely needed and ensuring any exception could be practically implemented, while still achieving the objectives of the *Essential Freshwater* reforms.
- 27 We are also limited in the changes that we can make under section 360(1)(hn) of the RMA, and note that longer term regulatory change to the Stock Exclusion Regulations (detailed in paragraphs 48–49) is desirable to be able to provide flexibility for specific situations, including for lower intensity farming.
- 28 In the short term, we have identified two specific situations (outlined in the following subsections) where an exception from the low slope map for lower intensity farming would be appropriate, while still ensuring these areas achieve freshwater outcomes.
- 29 We do not propose any other short-term changes to the requirements to exclude stock from natural wetlands, outside of the Upper Taieri Scroll Plain (outlined in paragraphs 33–42). We do not consider a broader exception is justifiable at this time.

Enabling lower intensity farming on Department of Conservation (DOC) and Toitū Te Whenua Land Information New Zealand (LINZ) land where a stocking rate is already set

- 30 The map of low slope land captures some regions (eg the West Coast), where many farm blocks have licences or leases with DOC and LINZ to graze land at lower intensities. As part of these licences or leases, stocking rates are already controlled to manage the impact of grazing on the environment. Of the 43 grazing licences or leases currently in place for DOC administered land, 25 of them are due to expire prior to 1 July 2025, meaning a longer-term system change would still be required.
- 31 While this exception will mean that DOC and LINZ land is subject to different requirements when compared to privately owned land, we consider this justified given that the relevant land is subject to stocking rate requirements that manage the impact of stock on lakes and rivers. DOC and LINZ will continue to be involved in land use decisions (eg giving permission to graze stock) and are able to impose varying conditions that are appropriate to the circumstances. There are also relatively few licences and leases, making implementation far more practical (eg undertaking compliance monitoring) compared to a more general exception for all beef cattle and deer farms.
- 32 Therefore, we propose amending the Stock Exclusion Regulations to create an exception to the definition of low slope land where those arrangements include a limitation on the number of stock that may be grazed on the land, for any land:
- 32.1 subject to a concession document granted under Part 3B of the Conservation Act 1987 for the purpose of grazing stock on public conservation land, or
- 32.2 subject to a pastoral lease, occupation licence, special lease or discretionary pastoral activity, within the meaning of the Crown Pastoral Land Act 1998.

Creating an exception for the Upper Taieri Scroll Plain

- 33 The Upper Taieri Scroll Plain is classified as a 'Regionally Significant Wetland' and is currently captured by the Stock Exclusion Regulations.⁶ These wetlands are complex and compliance with the Stock Exclusion Regulations requirements is impractical in many instances. Annual flood flows in the upper reaches will ruin fences; and the shape of the river, which includes many oxbow lakes and seasonal ponds, makes it very difficult to fence (an image of the Plain is at **Appendix 4**).
- 34 Grazing within the Upper Taieri Scroll Plain is a form of weed management which will no longer be possible if stock are excluded, and exclusion may not lead to the best outcomes for these wetlands. We are concerned that this could result in a large area of land that is no longer manageable and may risk adverse outcomes for these wetlands regarding weed management (eg weeds left ungrazed becoming a fire risk).
- 35 The Otago Regional Council (ORC) has requested an exemption that would enable an alternative approach to stock exclusion in the Upper Taieri Scroll Plain. The ORC has proposed that an exception be trialled subject to a robust monitoring programme in place to ensure the impacts are understood.
- 36 We propose amending the Stock Exclusion Regulations to create an exception for the Upper Taieri Scroll Plain, on the basis that the ORC commits to implement a suitable management plan to manage grazing. This exception is to the requirements for excluding:
- 36.1 non-intensively grazed beef cattle and deer from lakes and wide rivers on low slope land (regulations 14 and 15), and
 - 36.2 all stock from natural wetlands (regulations 16, 17 and 18).
- 37 Other requirements to exclude stock (eg from lakes and rivers if beef cattle and deer are intensively grazed) will continue to apply.
- 38 We acknowledge there will be a range of views about how stock access to the Upper Taieri Scroll Plain should be managed, including concerns about degradation and incremental loss of the remaining wetlands.
- 39 That is why we have sought commitments from the ORC that any alternative management plan for the Upper Taieri Scroll Plain will:
- 39.1 be developed with the local community and tangata whenua⁷
 - 39.2 be implemented as soon as reasonably practical through its regional plan, and no later than 1 July 2025
 - 39.3 give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM)

⁶ Refer to **Appendix 1** which sets out how the Regulations work.

⁷ Treaty partners would expect to be involved in the design of any management plan, due to the cultural and historical significance the area holds to them, which would be consistent with the NPS-FM's direction where Treaty interests are concerned.

- 39.4 be designed for the purpose of achieving improved outcomes for the wetlands, and
- 39.5 include a monitoring and evaluation plan.
- 40 We note that directive policies in the NPS-FM regarding wetlands will continue to apply to the Upper Taieri Scroll Plain. Particularly, the NPS-FM's direction to:
- 40.1 give effect to Te Mana o te Wai
- 40.2 actively involve tangata whenua
- 40.3 protect the values of natural inland wetland, and
- 40.4 map and monitor natural inland wetlands.
- 41 We will expect to see robust management through the regional plan and improved outcomes for the Upper Taieri Scroll Plain. We have asked officials to review progress made by the end of 2024, and it is our intention to remove the exception and reimpose the requirements of the Stock Exclusion Regulations if these expectations are not met.
- 42 While we do not recommend any further exceptions to existing requirements to exclude stock from natural wetlands at this time, we recognise that unique situations like the Upper Taieri Scroll Plain could present themselves in future. If this happens, it is our intention to consider whether additional exceptions are necessary at that time.

Technical issues

Clarifying that low slope land does not include land that exceeds 10 degrees in slope

- 43 Recent amendments to the map of low slope land significantly improved its accuracy (only 0.02% of the map's land is expected to exceed 10 degrees). However, feedback indicates there is still some residual concern about the map's accuracy.
- 44 We propose making it clear in the Stock Exclusion Regulations that low slope land does not include land that exceeds 10 degrees in slope, despite being captured by the map of low slope land, and is to be determined by measuring the slope over any 20-metre distance of the land, consistent with intensive winter grazing regulations. This will provide certainty and address any residual concerns.

Updating the definition of a permanent fence

- 45 The Regulations include an exception to the 3-metre setback rule for permanent fences that were existing as at 3 September 2020.⁸
- 46 Stakeholder feedback has suggested that the current definition is unnecessarily prescriptive, and excludes some common permanent fence types (eg post and rail) that are effective at excluding stock. We agree, and propose to update the definition of a permanent fence to allow for any type of permanent fence that achieves the purpose of excluding stock from a waterway, provided it is in place at the commencement of these Amendment Regulations.

⁸ In the Regulations, a permanent fence means: a post and batten fence with driven or dug fence posts; or an electric fence with at least 2 electrified wires and driven or dug fence posts; or a deer fence.

- 47 This change cannot have retrospective effect and will not alter the previous requirements in place as at 3 September 2020.

Transitioning the regulations into another legislative instrument could provide greater flexibility in future

- 48 Overall, consultation feedback highlighted support for regulations that provide flexibility while still achieving desired outcomes. However, regulations made under s360(1)(hn) of the RMA have a limited ability to do this – it must be clear on the face of it whether a requirement to exclude stock applies. For example, we are not able to allow regional councils to be more permissive through their regional plans in the same way that we could through a National Environmental Standard.
- 49 Other legislative instruments (eg National Environmental Standards, freshwater farm plan regulations, or a future National Planning Framework which addresses the current limitations) could provide more flexibility and enable additional exceptions to the Regulations where required. We have therefore requested further advice by 1 July 2024 from Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) officials on transitioning the Regulations into another legislative instrument.

Financial Implications

- 50 There are no direct financial implications to the Crown associated with the proposals in this paper.

Timing and 28-day rule

- 51 We propose the 28-day rule will apply as normal, meaning the Amendment Regulations will come into force 28 days after they are notified in the Gazette.

Compliance

- 52 We confirm the Amendment Regulations comply with each of the following:
- 52.1 the principles of the Treaty of Waitangi
 - 52.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - 52.3 the principles and guidelines set out in the Privacy Act 2020
 - 52.4 relevant international standards and obligations, and
 - 52.5 the Legislation Guidelines (2021 edition), maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 53 We are not aware of any grounds for the Regulation Review Committee to draw these instruments to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel Office

- 54 The Resource Management (Stock Exclusion) Amendment Regulations 2023 have been certified by PCO as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 55 A regulatory impact statement has been completed and is attached at **Appendix 2**.
- 56 The regulatory impact statement differs to the recommendations in this paper, as it does not recommend creating an exception for the Upper Taieri Scroll Plain.
- 57 A quality assurance panel with members from the Ministry for Primary Industries and the Ministry for the Environment has reviewed the Regulatory Impact Statement. The panel considers that it partially meets the Quality Assurance criteria.
- 58 The Interim Regulatory Impact Statement clearly sets out the context for the issues that it analyses and shows adequate consultation with affected parties. The Regulatory Impact Statement, however, lacks a clear analysis and conclusion of the options relative to the selected objectives in relation to issue one – Options to exempt lower intensity farms from the map of low slope land. Overall, the quality assurance panel considers that the information and analysis in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions.

Climate Implications of Policy Assessment

- 59 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as is not likely to influence gross stocking rates and therefore the threshold for significance is not met.

Publicity

- 60 We will make a public announcement following Cabinet approval, confirming amendments to the Regulations.

Proactive Release

- 61 We propose that this Cabinet paper and any associated minute be released proactively within 30 business days of final decisions being taken by Cabinet, subject to redactions considered under the provisions of the Official Information Act 1982.

Consultation

- 62 Officials from MfE and MPI jointly prepared this paper. The Treasury, Department of Conservation, Toitū Te Whenua Land Information New Zealand, Te Arawhiti, Te Puni Kōkiri, Ministry of Justice, Department of the Prime Minister and Cabinet, Department of Internal Affairs, and the Parliamentary Counsel Office, were consulted on this paper. Any comments received have been reflected in this paper.

Recommendations

The Minister of Agriculture and Minister for the Environment recommend that the Cabinet Economic Development Committee:

Background

- 1 **note** that the *Essential Freshwater* regulatory package, including the Resource Management (Stock Exclusion Regulations) 2020 (the Regulations), was gazetted in August 2020
- 2 **note** that in November 2022, Cabinet agreed to:
 - 2.1 progress changes to the map of low slope land to improve how it identifies low slope land and to avoid capturing lower intensity farming in the high country
 - 2.2 develop an exception to the requirement excluding beef cattle and stock from water bodies for farms that met a threshold or definition for lower intensity farming, even in areas captured by the map of low slope land, and
 - 2.3 undertake further consultation to determine the correct thresholds and measures to underpin the exception [ENV-22-MIN-0051]

Consultation

- 3 **note** that Cabinet subsequently agreed to release a discussion document [ENV-23-MIN-0014] seeking feedback on:
 - 3.1 excepting lower intensity farming on the low slope map, by either:
 - 3.1.1 defining lower intensity farming for the purpose of an exception to the map of low slope land, based on a threshold of stock units per hectare; or
 - 3.1.2 using certified freshwater farm plans to address the unintended capture of lower intensity farming on the map of low slope land, once such plans become available
 - 3.2 applying any of the above options to requirement to exclude stock from natural wetlands; and
 - 3.3 addressing other technical issues
- 4 **note** that submitters suggested a range of alternative options for addressing the issue of the map of low slope land but, while some options have merit, the design of s360(1)(hn) of the Resource Management Act 1991 (RMA) does not enable them

Policy decisions and authorisation

- 5 **note** that the Minister of Agriculture and Minister for the Environment have taken policy decisions and instructed the Parliamentary Counsel Office to draft the Resource Management (Stock Exclusion) Amendment Regulations 2023 (Amendment Regulations), as authorised by Cabinet [ENV-22-MIN-0051]
- 6 **authorise** the submission of the Amendment Regulations to the Executive Council

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Providing lower intensity farming with additional flexibility in the short term

- 7 **note** that the Minister of Agriculture and Minister for the Environment do not propose excepting lower intensity farming more broadly as this time, due to challenges presented by both options consulted on, and limitations in the changes that can be made under s360(1)(hn) of the RMA
- 8 **note** that the Minister of Agriculture and Minister for the Environment do not consider a broader exception for excluding stock from natural wetlands is justifiable at this time

Enabling lower intensity farming on Department of Conservation (DOC) and Toitū Te Whenua Land Information New Zealand (LINZ) land where a stocking rate is already set

- 9 **note** that the map of low slope land captures some regions where farm blocks have licences or leases with DOC and LINZ to graze at lower intensity
- 10 **agree** to create an exception from the definition of low slope land for where those arrangements include a limitation on the number of stock that may be grazed on the land, for any land:
- 10.1 subject to a concession document granted under Part 3B of the Conservation Act 1987 for the purpose of grazing stock on public conservation land; or
- 10.2 subject to a pastoral lease, occupation licence, special lease or discretionary pastoral activity, within the meaning of the Crown Pastoral Land Act 1998

Creating an exception for the Upper Taieri Scroll Plain

- 11 **note** that the Upper Taieri Scroll Plain is complex, and compliance with the Regulations' requirements is impractical in many instances because of oxbow lakes, ponds and annual flood flows
- 12 **note** that periodic grazing adjacent to oxbow lakes and ponds is a form of weed management which will no longer be possible if stock are excluded
- 13 **note** that the Otago Regional Council has requested an exemption from the Regulations that would enable an alternative approach to stock exclusion in the Upper Taieri Scroll Plain
- 14 **agree** to amending the Regulations to create an exception for the Upper Taieri Scroll Plain, on the basis that the ORC has indicated it intends to implement a suitable management plan to manage grazing
- 15 **note** that this exception is to the requirements for:
- 15.1 excluding non-intensively grazed beef cattle and deer from lakes and wide rivers on low slope land (regulations 14 and 15); and
- 15.2 excluding all stock from natural wetlands (regulations 16, 17 and 18)
- 16 **note** that there will be a range of views about how stock access to the Upper Taieri Scroll Plain should be managed, including concerns about degradation and incremental loss of the remaining wetlands

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- 17 **note** that the Minister of Agriculture and the Minister for the Environment have sought commitments from the ORC that any alternative management plan for the Upper Taieri Scroll Plain will:
- 17.1 be developed with the local community and tangata whenua
 - 17.2 be implemented as soon reason as reasonably practical through its regional plan, no later than 1 July 2025
 - 17.3 give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM)
 - 17.4 be designed for the purpose of achieving improved outcomes for the wetlands, and
 - 17.5 include a monitoring and evaluation plan
- 18 **note** that that directive policies in the NPS-FM regarding wetlands will continue to apply to the Upper Taieri Scroll Plain
- 19 **note** that the Minister of Agriculture and Minister for the Environment have asked officials to review progress made by the end of 2024
- 20 **note** that the Minister of Agriculture and Minister for the Environment intend to remove the exception and reimpose the requirements of the Regulations if their expectations of an alternative ORC management plan are not met

Technical issues

Clarifying that low slope land does not include land that exceeds 10 degrees in slope

- 21 **note** that recent amendments to the map of low slope land significantly improved its accuracy, but that feedback indicates there is still some residual concern about the map's accuracy
- 22 **agree** to make it clear in the Regulations that low slope land does not include land that exceeds 10 degrees in slope, despite being captured by the map of low slope land, and that this is to be determined by measuring the slope over any 20-metre distance of the land

Updating the definition of a permanent fence

- 23 **note** that the Regulations include an exception to the 3-metre setback rule for permanent fences that were existing as at 3 September 2020
- 24 **note** that stakeholder feedback suggested that the current definition is unnecessarily prescriptive and excludes some common fence types that are effective at excluding stock
- 25 **agree** to update the definition of a permanent fence to allow for any type of permanent fence that achieves the purpose of excluding stock from a waterway

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Transitioning the regulations into another legislative instrument could provide greater flexibility in future

- 26 **note** that consultation feedback highlighted support for regulations that provide flexibility while still achieving desired outcomes, but that the Regulations made under s360(1)(hn) of the RMA have a limited ability to do this
- 27 **note** that by 1 July 2024 officials will provide the Minister of Agriculture and Minister for the Environment with further advice on transitioning the Regulations into another legislative instrument

Timing and the 28 day rule

- 28 **note** that the Amendment Regulations will come into force 28 days following notification in the Gazette

Proactive Release

- 29 **note** that this Cabinet paper and any associated minute will be released proactively within 30 business days of final decisions being taken by Cabinet, subject to redactions considered under the provisions of the Official Information Act 1982.

Authorised for lodgement

Hon Damien O'Connor
Minister of Agriculture

Hon David Parker
Minister for the Environment

Appendix 1: Overview of the Stock Exclusion Regulations

- 1 Any person who owns or controls stock is responsible for excluding them from water bodies, if required by the Stock Exclusion Regulations.
- 2 Requirements to exclude stock apply to dairy cattle, pigs, dairy support cattle,⁹ beef cattle, and deer. There are no requirements to exclude sheep or other stock.
- 3 For lakes, and rivers with beds more than a metre wide:
 - 3.1 on any terrain, dairy cattle and pigs must be excluded immediately on any new pastoral system, and otherwise by 1 July 2023
 - 3.2 on any terrain, dairy support cattle must be excluded immediately on any new pastoral system, and otherwise by 1 July 2025
 - 3.3 on any terrain, intensively grazed¹⁰ beef cattle and deer must be excluded immediately on any new pastoral system, and otherwise by 1 July 2023
 - 3.4 on low slope land, beef cattle and deer must be excluded immediately on any new pastoral system, and otherwise by 1 July 2025. Low slope land means those parts of a farm included within a map of low slope land, which is incorporated by reference in the Stock Exclusion Regulations¹¹
 - 3.5 low slope land is used as a proxy for areas that are likely to be more intensively farmed, even if beef cattle or deer are not 'intensively grazing' as defined.
- 4 Where these requirements apply, stock must be set back a minimum of three metres unless a permanent fence or riparian vegetation was in place when the Stock Exclusion Regulations commenced.
- 5 All of the above stock types must be excluded from natural wetlands:
 - 5.1 identified in a regional or district plan or regional policy statement, immediately on any new pastoral system, and otherwise by 1 July 2023
 - 5.2 that support a population of threatened species, immediately on any new pastoral system, and otherwise by 1 July 2025
 - 5.3 that are 0.05 hectares (500 square metres) or more, but only on parts of a farm captured in the map of low slope land, immediately on any new pastoral system, and otherwise by 1 July 2025.
- 6 The Stock Exclusion Regulations are a minimum requirement, and regional plans and/or certified freshwater farm plans may be more stringent.

⁹ 'Dairy support cattle' are defined in the Stock Exclusion Regulations as cattle that are farmed for producing milk but are not being milked (for example, because they are heifers or have been dried off); and are grazed on land that is not grazed by dairy cattle.

¹⁰ 'Intensively grazing' is defined in the Stock Exclusion Regulations as break feeding, grazing on annual forage crops, or grazing on pasture that has been irrigated with water in the previous 12 months.

¹¹ The map of low slope land, incorporated by reference in the Stock Exclusion Regulations, identifies areas of land with a slope of 5 degrees or less, and of 500 metres or below in altitude.

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Appendix 2: Regulatory Impact Statement

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Appendix 3: Amendment Regulations

Appendix 4: Image of Taieri Scroll Plain



Figure 1 Upper Taieri Wetlands Complex at Styx (January 2005), Otago Regional Council – Photo Archive.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Resource Management (Stock Exclusion) Amendment Regulations 2023

Portfolios **Agriculture / Environment**

On 30 August 2023, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the Essential Freshwater regulatory package, including the Resource Management (Stock Exclusion Regulations) 2020 (the Regulations), was gazetted in August 2020;
- 2 **noted** that in November 2022, the Cabinet Environment, Energy and Climate Committee (ENV) agreed to:
 - 2.1 progress changes to the map of low slope land to improve how it identifies low slope land and to avoid capturing lower intensity farming in the high country;
 - 2.2 develop an exception to the requirement excluding beef cattle and stock from water bodies for farms that met a threshold or definition for lower intensity farming, even in areas captured by the map of low slope land;
 - 2.3 undertake further consultation to determine the correct thresholds and measures to underpin the exception;

[ENV-22-MIN-0051]

Consultation

- 3 **noted** that in June 2023, ENV subsequently agreed to release a discussion document seeking feedback on:
 - 3.1 excepting lower intensity farming on the low slope map, by either:
 - 3.1.1 defining lower intensity farming for the purpose of an exception to the map of low slope land, based on a threshold of stock units per hectare; or
 - 3.1.2 using certified freshwater farm plans to address the unintended capture of lower intensity farming on the map of low slope land, once such plans become available;
 - 3.2 applying any of the above options to the requirement to exclude stock from natural wetlands;

3.3 addressing other technical issues;

[ENV-23-MIN-0014]

- 4 **noted** that submitters suggested a range of alternative options for addressing the issue of the map of low slope land but, while some options have merit, the design of section 360(1)(hn) of the Resource Management Act 1991 (RMA) does not enable them;

Policy decisions and authorisation

- 5 **noted** that the Minister of Agriculture and the Minister for the Environment have taken policy decisions and instructed the Parliamentary Counsel Office to draft the Resource Management (Stock Exclusion) Amendment Regulations 2023 (the Regulations), as authorised by ENV [ENV-22-MIN-0051];

- 6 **authorised** the submission of the Regulations [PCO 25788/2.0] to the Executive Council;

Providing lower intensity farming with additional flexibility in the short term

- 7 **noted** that the Minister of Agriculture and the Minister for the Environment do not propose excepting lower intensity farming more broadly as this time, due to challenges presented by both options consulted on, and the limitations in the changes that can be made under section 360(1)(hn) of the RMA;

- 8 **noted** that the Minister of Agriculture and the Minister for the Environment do not consider that a broader exception for excluding stock from natural wetlands is justifiable at this time;

Enabling lower intensity farming on Department of Conservation and Toitū Te Whenua Land Information New Zealand land where a stocking rate is already set

- 9 **noted** that the map of low slope land agreed by ENV in November 2022 captures some regions where farm blocks have licences or leases with the Department of Conservation and Land Information New Zealand to graze at lower intensity;

- 10 **agreed** to create an exception from the definition of low slope land for where those arrangements include a limitation on the number of stock that may be grazed on the land, for any land:

10.1 subject to a concession document granted under Part 3B of the Conservation Act 1987 for the purpose of grazing stock on public conservation land; or

10.2 subject to a pastoral lease, occupation licence, special lease or discretionary pastoral activity, within the meaning of the Crown Pastoral Land Act 1998;

Creating an exception for the Upper Taieri Scroll Plain

- 11 **noted** that the Upper Taieri Scroll Plain is complex, and that compliance with the Regulations' requirements is impractical in many instances because of oxbow lakes, ponds and annual flood flows;

- 12 **noted** that periodic grazing adjacent to oxbow lakes and ponds is a form of weed management, which will no longer be possible if stock are excluded;

- 13 **noted** that the Otago Regional Council (ORC) has requested an exemption from the Regulations that would enable an alternative approach to stock exclusion in the Upper Taieri Scroll Plain;

- 14 **agreed** to amend the Regulations to create an exception for the Upper Taieri Scroll Plain, on the basis that the ORC has indicated it intends to implement a suitable management plan to manage grazing;
- 15 **noted** that this exception is to the requirements for:
- 15.1 excluding non-intensively grazed beef cattle and deer from lakes and wide rivers on low slope land (regulations 14 and 15); and
 - 15.2 excluding all stock from natural wetlands (regulations 16, 17 and 18);
- 16 **noted** that there will be a range of views about how stock access to the Upper Taieri Scroll Plain should be managed, including concerns about degradation and incremental loss of the remaining wetlands;
- 17 **noted** that the Minister of Agriculture and the Minister for the Environment have sought commitments from the ORC that any alternative management plan for the Upper Taieri Scroll Plain will:
- 17.1 be developed with the local community and tangata whenua;
 - 17.2 be implemented as soon reason as reasonably practical through its regional plan, no later than 1 July 2025;
 - 17.3 give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM);
 - 17.4 be designed for the purpose of achieving improved outcomes for the wetlands; and
 - 17.5 include a monitoring and evaluation plan;
- 18 **noted** that that directive policies in the NPS-FM regarding wetlands will continue to apply to the Upper Taieri Scroll Plain;
- 19 **noted** that the Minister of Agriculture and the Minister for the Environment have asked officials to review the progress made by the end of 2024;
- 20 **noted** that the Minister of Agriculture and the Minister for the Environment intend to remove the exception and reimpose the requirements of the Regulations if their expectations of an alternative ORC management plan are not met;

Technical issues

Clarifying that low slope land does not include land that exceeds 10 degrees in slope

- 21 **noted** that recent amendments to the map of low slope land significantly improved its accuracy, but that feedback indicates there is still some residual concern about the map's accuracy;
- 22 **agreed** to make it clear in the Regulations that low slope land does not include land that exceeds 10 degrees in slope, despite being captured by the map of low slope land, and that this is to be determined by measuring the slope over any 20-metre distance of the land;

Updating the definition of a permanent fence

- 23 **noted** that the Regulations include an exception to the 3-metre setback rule for permanent fences that were existing as at 3 September 2020;

- 24 **noted** that stakeholder feedback suggested that the current definition is unnecessarily prescriptive and excludes some common fence types that are effective at excluding stock;
- 25 **agreed** to update the definition of a permanent fence to allow for any type of permanent fence that achieves the purpose of excluding stock from a waterway;

Transitioning the regulations into another legislative instrument could provide greater flexibility in future

- 26 **noted** that consultation feedback highlighted support for regulations that provide flexibility while still achieving desired outcomes, but that the Regulations made under section 360(1)(hn) of the RMA have a limited ability to do this;
- 27 **noted** that by 1 July 2024, officials will provide the Minister of Agriculture and the Minister for the Environment with further advice on transitioning the Regulations into another legislative instrument;

Timing

- 28 **noted** that the Regulations will come into force on 5 October 2023.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Aysha Verrall
Hon Andrew Little
Hon David Parker
Hon Peeni Henare
Hon Kieran McAnulty
Hon Dr Duncan Webb
Hon Jo Luxton
Hon Rachel Brooking

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hon David Parker
Minister for the Environment

Hon Damien O'Connor
Minister of Agriculture



COR5167

Cr Gretchen Robertson
Chair, Otago Regional Council
gretchen.robertson@orc.govt.nz

CC:
Richard Saunders
Chief Executive, Otago Regional Council
richard.saunders@orc.govt.nz

Dear Gretchen,

Stock exclusion in the Upper Taieri Scroll Plain

We thank you and your officers from the Otago Regional Council (the Council) for your feedback on the recent consultation regarding the Resource Management (Stock Exclusion) Regulations 2020 and lower intensity farming.

The consultation sought feedback on developing solutions for lower intensity farming, where we expect the marginal environmental benefits of excluding stock from accessing water bodies will be lower, for significantly higher cost.

We also asked for feedback on any circumstances where it might be desirable to apply an exception to requirements to exclude stock from natural wetlands. We accept that there is a case to provide such an exception for the geographic area known as the Upper Taieri Scroll Plain.

We are now writing to seek your agreement to manage stock access to freshwater in the Upper Taieri Scroll Plain using a suitable management plan, before we progress an exception to regulatory requirements.

The case for an exception in the Upper Taieri Scroll Plain

Feedback from the local community, and the memo provided by the Council in February 2023 (attached for reference), have been key to understanding the Upper Taieri Scroll Plain.

We acknowledge the size and complexity of the wetlands mean they are both unique and particularly challenging for excluding stock. We also understand that the threat of pest species to the health of the wetlands has historically been effectively managed through controlled grazing of cattle.

We consider improved freshwater outcomes for the Upper Taieri Scroll Plain is better achieved through an alternative approach that allows for carefully managed grazing, and note that this is not possible without accommodation in the Stock Exclusion Regulations.

Notwithstanding the above, we note grazing can suppress regenerative native species in wetlands and poses other risks to their health. We also note that some members of the local community are concerned that an alternative approach may not lead to improved outcomes. This includes Aukaha, as represented by Korako Edwards and Sandra McIntyre at the community meeting (on behalf of Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou). That is why our agreement to progress an exception is conditional on your agreement to implement a robust plan for managing stock access to the wetlands, following standard council processes.

The scope of an exception in the Upper Taieri Scroll Plain

Subject to agreement from both you and Cabinet, we propose that stock access within the Upper Taieri Scroll Plain area be regulated through regional plan provisions.

In practice, this would mean the Stock Exclusion Regulations identify the geographic area known as the Upper Taieri Scroll Plain (ie, according to a map incorporated by reference), and specify that the following provisions do not apply:

- regulation 14, excluding beef cattle from lakes and wide rivers on low slope land
- regulation 15, excluding deer from lakes and wide rivers on low slope land
- regulation 16, excluding all stock from natural wetlands identified in regional or district plan
- regulation 17, excluding all stock from natural wetlands that support threatened species described in the National Policy Statement for Freshwater Management 2020, and
- regulation 18, excluding all stock from natural wetlands on low slope land.

Our proposed exception relies on the Council implementing a robust plan to manage stock access to achieve improved environmental outcomes. There is limited scope to consider alternatives; we are advised that an exception cannot be based on your regional plan.

Our expectations for managing stock access to the Upper Taieri Scroll Plain

We are requesting your council to indicate a willingness to develop and implement a management plan for stock access to the Upper Taieri Scroll Plain. We expect that such a management plan will:

1. *Be developed in consultation with the local community and tangata whenua, with opportunities for input from the Ministry for the Environment and Ministry for Primary Industries.*
2. *Be implemented as soon as reasonably practical through your regional plan, no later than 1 July 2025 when remaining requirements to exclude stock from natural inland wetlands come into force.*
3. *Give effect to the National Policy Statement for Freshwater Management 2020, particularly its direction to give effect to Te Mana o te Wai, actively involve tangata whenua, protect the values of natural inland wetlands, and map and monitor natural inland wetlands.*
4. *Be designed for the purpose of achieving improved outcomes for the wetlands. That is, the exception cannot permit the status quo to continue without change.*

5. *Include a monitoring and evaluation plan*, to ensure that the impacts of grazing in the Upper Taieri Scroll Plain are understood and actively managed, with adequate oversight from the Council to ensure that improved outcomes are achieved.

We ask that you reply by letter to confirm your intention to meet the above expectations. Subject to Cabinet agreement, we will progress an exception to the Upper Taieri Scroll Plains as described above. We will reconsider whether an exception is appropriate if it becomes clear that our expectations have not been met.

We ask that you provide officials with spatial data identifying the geographic area known as the Upper Taieri Scroll Plain at the earliest opportunity, to enable drafting of amended regulations to proceed in a timely manner. To enable drafting, we require those data to be sent to officials prior to 24 August 2023.

Please note that we are also advising Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Aukaha, Te Rūnanga o Ngāi Tahu and Te Ao Mārama of this proposed approach to manage stock exclusion in the Upper Taieri Scroll Plain.

Your sincerely,



Hon David Parker

Minister for the Environment



Hon Damien O'Connor

Minister of Agriculture

From the Office of the Chairperson

24 August 2023

Hon David Parker & Hon Damien O'Connor
Ministers for the Environment and Agriculture
Parliament Buildings
Wellington

via **EMAIL:** david.parker@parliament.govt.nz
damien.o'connor@parliament.govt.nz



Dear Ministers Parker and O'Connor

Stock Exclusion in the Upper Taieri Scroll Plain

Thank you for your letter dated 22 August in relation to the Upper Taieri Scroll Plain. We acknowledge and appreciate the time you have both taken to understand the unique environment of the scroll plain, and some of the complexities associated with managing such a taonga.

ORC remains committed to implementing the suite of legislation aimed to improve freshwater management in New Zealand, including the stock exclusion regulations. However, as your letter outlines, application of those regulations in the Upper Taieri may not result in the best outcomes for the wetlands and its values.

As a Council, we discussed your proposal for an alternative pathway to manage the scroll plain and are pleased to advise you that we support the alternative approach of a management plan for the Upper Taieri. We are cognisant that there are still legislative requirements for you to work through in order that this option might be realised and we look forward to updates on the progress through Cabinet of the exception pathway.

Specifically, subject to Cabinet approval, the ORC commits to the development and implementation of a management plan for the Upper Taieri Scroll Plain that :

- Is developed in consultation with the local community and tangata whenua, and makes opportunities available for input from both MfE and MPI; and
- Is implemented as soon as reasonably practical through our Land and Water Regional Plan that is currently under development. We acknowledge the Upper Taieri implementation plan is to be implemented by 1 July 2025; and

For our future

- Gives effect to the NPFM 2020, including by giving effect to Te Mana o te Wai, actively involving tangata whenua, protecting the values of natural inland wetlands, and mapping and monitoring natural inland wetlands; and
- Is designed for the purpose of achieving improved outcomes for the wetlands; and
- Includes a monitoring and evaluation plan to ensure the impacts of grazing in the scroll plain are understood and actively managed, and that ORC has appropriate oversight to ensure wetland values are maintained and enhanced.

We have also had discussions with MfE staff and confirmed that the data we hold that delineates the Upper Taieri Scroll Plain is suitable. We will send that through to staff today.

If you would like to discuss any matters raised in this letter, or if any point would benefit from further clarification, please contact Richard Saunders, Chief Executive (richard.saunders@orc.govt.nz).

Again, thank you for this opportunity to provide an alternative framework to protect the scroll plain.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gretchen Robertson', written over a light blue horizontal line.

Cr Gretchen Robertson
Chairperson