

Office of the Minister of Agriculture
Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

Resource Management Act 1991: Freshwater farm plan regulations

Proposal

- 1 This paper seeks authority to submit the Resource Management (Freshwater Farm Plans) Regulations 2023 and the Resource Management (Application of Part 9A – Freshwater Farm Plans) Order 2023 under Part 9A of the Resource Management Act 1991 (RMA) to the Executive Council.

Executive Summary

- 2 Freshwater Farm Plans (FW-FPs) are a core part of the Government's commitment to improving freshwater health and management through the Essential Freshwater work programme [CAB-18-MIN-0296].
- 3 There is widespread agreement that managing the effects of farming on freshwater needs to consider the complexity and variability of New Zealand's landscapes, climate, and farming systems. In some cases, resource consents, national regulation or regional rules are effective and efficient tools. However, the complexity and uniqueness of each farm means another complementary tool is needed, where these traditional regulatory instruments are not flexible enough to address individual circumstances.
- 4 FW-FPs will help protect and restore New Zealand's freshwater by assessing each farm's potential impact on freshwater and developing a tailored set of actions to address these, in light of the catchment in which each farm sits.
- 5 Part 9A of the RMA established Freshwater Farm Plans (FW-FPs) as a new mandatory and enforceable regulatory tool that would support farmers and their advisors to implement actions that address on-farm risks to freshwater outcomes [CAB-18-MIN-0296].
- 6 Section 217M of Part 9A of the RMA allows for the making of regulations in relation to Part 9A. On 1 August 2022, Cabinet agreed to the commencement of drafting the FW-FP regulations 2023 under Part 9A of the RMA and agreed to core parts of the FW-FP system [CAB-22-MIN-0293].
- 7 To ensure the regulations are fit for purpose, the Minister for the Environment released an exposure draft for consultation and to make further decisions as necessary to give effect to Cabinet's system design decisions [CAB-22-MIN-0293]. Refinements have been made to the regulations in response the exposure draft consultation process.
- 8 Section 217C of Part 9A allows for the Minister for the Environment, in consultation with the Minister of Agriculture, to phase the rollout of Part 9A across regions, districts or parts of New Zealand (including areas within regions). This is done via Order in Council issued by the Governor-General, on the recommendation of the Minister for the Environment.

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- 9 Cabinet agreed that the description of the geographical areas to which Part 9A and the regulations apply would be periodically updated and notified by Order in Council, as and when new areas fall under the FW-FP system [CAB-22-MIN-0293].
- 10 The Freshwater Farm Plan regulations will come into force nationally on 1 August 2023, but will apply only in areas where Part 9A has been “switched on”. The Minister for the Environment, in consultation with the Minister of Agriculture, recommends to initially switch on Part 9A in two regions – Southland and Waikato.
- 11 It is intended for Part 9A and the regulations to apply across the entirety of all 16 regions by the end of 2025.

Background

- 12 Freshwater Farm Plans (FW-FPs) are a core part of the Government’s commitment to improving freshwater health and management through the Essential Freshwater work programme [CAB-18-MIN-0296].
- 13 There is widespread agreement that managing the effects of farming on freshwater needs to consider the complexity and variability of New Zealand’s landscapes, climate, and farming systems. In some cases, resource consents, national regulation or regional rules are effective and efficient tools. However, the complexity and uniqueness of each farm means another complementary tool is needed, where these traditional regulatory instruments are not flexible enough to address individual circumstances.
- 14 FW-FPs will help protect and restore New Zealand’s freshwater by assessing each farm’s potential impact on freshwater and developing a tailored set of actions to address these, in light of the catchment in which each farm sits.
- 15 Part 9A of the RMA established Freshwater Farm Plans (FW-FPs) as a new mandatory and enforceable regulatory tool that would support farmers and their advisors to implement actions that address on-farm risks to freshwater outcomes [CAB-18-MIN-0296].
- 16 On 2 July 2021, Cabinet approved the release of the Freshwater Farm Plan Regulation: Discussion Document for public consultation on regulatory design options [CAB-21-MIN-0270]. Public consultation ran from 26 July to 7 October 2021 and officials received 172 submissions on FW-FPs.
- 17 Section 217M of the RMA allows for the making of regulations in relation to Part 9A. On 1 August 2022, Cabinet agreed to the commencement of drafting the FW-FP regulations 2023 under Part 9A of the RMA and agreed to core parts of the FW-FP system [CAB-22-MIN-0293].
- 18 The FW-FP regulations set out obligations for the preparation, certification, audit and enforcement of FW-FPs. They also outline process and management practice requirements to support farm operators, certifiers and auditors to perform their duties. Further detail for meeting requirements for processes and practices will be provided through guidance.
- 19 FW-FPs will build on work farmers and growers have already done via farm planning and fit as a module within a broader Integrated Farm Planning programme [CAB-21-MIN-0162].

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Policy

The FW-FP regulations are designed to better control the adverse effects of farming on freshwater and freshwater ecosystems.

- 20 Key aspects of the FW-FP system include:
 - 20.1 linking catchment context, challenges, and values to on farm management decisions through FW-FPs
 - 20.2 a risk assessment framework to support farmers and growers in identifying, assessing, and developing mitigations to freshwater management risks in a nationally consistent way
 - 20.3 specification of FW-FP minimum content requirements
 - 20.4 processes for the certification and audit of FW-FPs, the appointment of certifiers and auditors, and compliance, monitoring and enforcement of FW-FPs
 - 20.5 data and reporting requirements for certifiers, auditors and regional councils
 - 20.6 arrangements for system oversight of the FW-FP system.
- 21 To ensure the regulations are fit for purpose, the Minister for the Environment released an exposure draft for consultation and to make further decisions as necessary to give effect to Cabinet's system design decisions [CAB-22-MIN-0293].
- 22 Some changes have been proposed to improve clarity and assist with implementation, in response to stakeholder feedback, including:
 - 22.1 previously Cabinet agreed that a FW-FP must be certified within 12 months of the regulations coming into effect in the specified region, district or part. Based on stakeholder feedback, we recommend extending this timeframe to 18 months.
 - 22.2 previously Cabinet agreed on the type of situations which trigger recertification. Based on stakeholder feedback we recommend adding two additional situations:
 - 22.2.1 where a farm has significant new inherent vulnerability
 - 22.2.2 where land that is subject to different catchment challenges, values and context is added to the farm operation.
 - 22.3 based on stakeholder feedback, we also recommend allowing, where only minor changes have occurred to part of the farm's land or activities, for only that part of the farm to require recertification.
 - 22.4 we recommend amending the definition of Catchment Context, Challenges and Values (CCCV) for clarity. We recommend that CCCV information includes (without limitation):
 - 22.4.1 existing local area information: (e.g., landforms, soil data, climate data, freshwater data, freshwater bodies, priority contaminants, significant sites to the community, significant species or ecosystems)
 - 22.4.2 identified cultural matters of importance to tangata whenua
 - 22.4.3 freshwater objectives, policies, rules in relevant regional policy statements and operative regional plans
relevant freshwater matters in planning documents recognised by an iwi authority and lodged with regional councils
 - 22.4.4 National Policy Statement for Freshwater Management 2020 and action plans made by regional councils

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- 22.4.5 secondary legislation under the RMA relevant to the management of freshwater or freshwater ecosystems.
- 22.5 previously Cabinet agreed that several infringement offences should be incorporated into the FW-FP regulations. We now consider one of these offences as unnecessary. We recommend that the proposed infringement offence which related to where a 'farm operator does not lodge an addendum or update details' should be deleted from the offences listed in these regulations.
- 23 The Minister for the Environment, in consultation with the Minister of Agriculture, has also instructed officials to make minor and technical changes to the regulations in response to feedback on the exposure draft.
- 24 The Minister for the Environment has consulted with the Minister of Agriculture in developing the regulations as required under section 217M. We are satisfied the regulations provide appropriate requirements for farm operators, certifiers and auditors operating under Part 9A of the RMA.
- An Order in Council to switch on Part 9A is required*
- 25 Part 9A of the RMA establishes the core requirement for farmer operators to have a certified FW-FP within the timeframe prescribed by the regulations, as well as containing the regulatory making powers to specify the particular requirements for FW-FPs.
- 26 The FW-FP system requires a transition from the current state (where there is a range of farm planning programmes with different standards and requirements outside of Part 9A of the RMA) to a situation where all farmers and growers have a FW-FP that is compliant with Part 9A of the RMA and the FW-FP regulations.
- 27 To achieve this change, a staged approach by time and regions will be taken to implement the FW-FP system across regions.
- 28 Part 9A of the RMA came into force on 30 June 2020, but does not apply to a region, district or part of New Zealand unless activated by an Order in Council made under section 217C of the RMA.
- 29 Section 217C of Part 9A allows for the Minister for the Environment, in consultation with the Minister of Agriculture, to apply Part 9A, including regulations made under section 217M, to a region, district or part of a region from a date specified in an Order in Council.
- 30 This is done via Order in Council issued by the Governor-General, on the recommendation of the Minister for the Environment, in consultation with the Minister of Agriculture.
- 31 On 1 August 2022, Cabinet agreed that the description of the geographical areas to which Part 9A and the regulations apply would be periodically updated and notified by Order in Council, as and when new areas fall under the FW-FP system [CAB-22-MIN-0293].
- 32 Section 217C requires that before making a recommendation under subsection (2) the Minister for the Environment must:
- 32.1 be satisfied that regulations are necessary to achieve the purpose of Part 9A in the specified district, region, or part of New Zealand; and
- 32.2 consult with the Minister of Agriculture.

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Where and when Part 9A will be switched on

- 33 The Minister for the Environment, in consultation with the Minister of Agriculture is recommending that initially Part 9A is switched on in two regions – Southland and Waikato.
- 34 The Freshwater Farm Plan regulations will come into force nationally on 1 August 2023, but will apply only in Waikato and Southland where Part 9A has been “switched on”.
- 35 The Ministry for the Environment has been working with Environment Southland and Waikato Regional Council to finalise a proposed implementation approach. Both regional councils have proposed rolling out the regulations in multiple phases across the freshwater management units in their region. The sequencing of this rollout is outlined in Appendix 1.
- 36 We are satisfied that these two regions are ready for the FW-FP regulations to be active in their area, and that commencing the regulations in these areas is necessary to achieve the purpose of Part 9A.
- 37 The policy intent is to phase rollout to regions, ensuring there is sufficient regional capability and capacity to implement the regulations.
- 38 The Ministry for the Environment, in consultation with the Ministry for Primary Industries, is currently working with regional councils to finalise and further specify the order and rollout commencement dates of future regions to be included in the FW-FP system. An indicative national rollout schedule is supplied at Appendix 2. It is intended Part 9A will commence across the entirety of all 16 regions by the end of 2025
- 39 We will monitor early implementation over the first 24 months, to inform whether further regulatory mechanisms are required to ensure flexibility of rollout.
- 40 The Minister for the Environment intends to return to Cabinet before the end of 2023 to outline a phasing approach to switch on Part 9A in the remaining areas of the country.

Timing and 28-day rule

- 41 Subject to Cabinet and Executive Council approval, the regulations will be gazetted on 15 June and come into force on 1 August 2023.

Compliance

- 42 The regulations comply with:
- 42.1 the principles of the Treaty of Waitangi
 - 42.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - 42.3 the principles and guidelines set out in the Privacy Act 2020
 - 42.4 relevant international standards and obligations
 - 42.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

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Regulations Review Committee

- 43 The Minister for the Environment and the Minister of Agriculture do not consider that there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 44 The regulations have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 45 An update to the Regulatory Impact Statement prepared for previous Cabinet decisions [CAB-22-MIN-0293] has been prepared and is attached in Annex 1.
- 46 The RIA panel considered that the updated RIS fully meets the RIA criteria.

Climate Implications of Policy Assessment

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

Proactive release

- 48 The Minister for the Environment and Minister of Agriculture intend to proactively release the Cabinet paper, subject to redactions as appropriate under the Official Information Act 1982, once Cabinet decisions have been confirmed.

Consultation

- 49 The following agencies have been consulted on the proposals in this paper: Treasury and Ministry of Justice. The Department of Conservation, Office for Māori Crown Relations – Te Arawhiti, Toitū Te Whenua Land Information New Zealand have been informed of this paper.
- 50 The Department of Prime Minister and Cabinet has been informed of the policy and draft regulations.

Recommendations

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

Context

- 1 **note** that Freshwater Farm Plans (FW-FPs) are a core part of the Government's commitment to improving freshwater health and management through the Essential Freshwater work programme [CAB-18-MIN-0296]
- 2 **note** that FW-FPs will help protect and restore New Zealand's freshwater by assessing each farm's potential impact on freshwater and developing a tailored set of actions to address these, in light of the catchment in which each farm sits
- 3 **note** that Part 9A of the Resource Management Act 1991 (RMA) establishes FW-FPs as a new mandatory and enforceable regulatory tool that would support farmers and their advisors to implement actions that address on-farm risks to freshwater outcomes
- 4 **note** that on 1 August 2022 the Cabinet Environment, Energy and Climate Committee agreed to the core policy of the Freshwater Farm Plan (FW-FP) system [CAB-22-MIN-0293]
- 5 **note** that regulations made under section 217M within Part 9A have been developed to:
 - 5.1 set out obligations for the preparation, certification, audit and enforcement of FW-FPs
 - 5.2 outline process and management practice requirements to support farm operators, certifiers and auditors to perform their duties
- 6 **note** that FW-FPs will be a module within the broader Integrated Farm Planning Programme [CAB-21-MIN-0162]

Amendment to previous Cabinet decisions on freshwater farm plan regulations

- 7 **note** that on 1 August 2022, Cabinet agreed to the commencement of drafting the FW-FP regulations 2023 under Part 9A of the RMA and agreed to core parts of the FW-FP system [CAB-22-MIN-0293]
- 8 **note** that in response to stakeholder feedback received during exposure draft consultation, some changes have been proposed to improve clarity and assist with implementation
- 9 **agree** to extend the timeframe for a farm operator to submit a FW-FP to a certifier from 12 months to 18 months
- 10 **agree** that the following situations will require recertification within 12 months:
 - 10.1 where a farm has significant new inherent risks
 - 10.2 where land that is subject to different catchment challenges, values and context is added to the farm operation

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- 11 **agree** that where only minor changes have occurred to part of the farm's land or activities, only that part of the farm requires recertification
- 12 **agree** to amend the definition of Catchment Context, Challenges and Values (CCCV) for clarity and that CCCV information could include (without limitation):
- 12.1 existing local area information: (e.g., landforms, soil data, climate data, freshwater data, freshwater bodies, priority contaminants, significant sites to the community, significant species or ecosystems)
 - 12.2 identified cultural matters of importance to tangata whenua
 - 12.3 freshwater objectives, policies, rules in relevant regional policy statements and operative regional plans
 - 12.4 relevant freshwater matters in planning documents recognised iwi authority and lodged with regional councils
 - 12.5 National Policy Statement for Freshwater Management 2020 and action plans made by regional councils
 - 12.6 secondary legislation under the RMA relevant to the management of freshwater or freshwater ecosystems
- 13 **agree** to delete the proposed infringement offence related to where a 'farm operator does not lodge an addendum or update details' from the infringement offences listed in the FW-FP regulations
- 14 **note** that Ministers have jointly finalised a competency framework for the appointment of certifiers and auditors
- 15 **note** that the Minister for the Environment has also, in consultation with the Minister of Agriculture, instructed PCO on a number of minor and technical changes to the regulations
- 16 **note** that Part 9A establishes the core requirement for farm operators to have a certified FW-FP within the timeframe prescribed by the regulations, as well as containing the regulation making powers to specify the particular requirements for farm plans
- 17 **note** that Part 9A of the RMA came into force on 30 June 2020, but does not apply to a region, district or part of New Zealand unless activated by an Order in Council made under section 217C of the RMA
- 18 **authorise** the submission to the Executive Council of the Resource Management (Freshwater Farm Plans) Regulations 2023

Order in Council to "switch on" Part 9A required

- 19 **note** that section 217C requires that before making a recommendation under subsection (2) the responsible Minister must:
- 19.1 be satisfied that regulations are necessary to achieve the purpose of this Part in the specified district, region, or part of New Zealand; and

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- 19.2 consult with the Minister of Agriculture
- 20 **agree** that Part 9A is initially switched on in two regions – Southland and Waikato
- 21 **note** that the Minister for the Environment considers that the requirements outlined above have been met for Southland and Waikato
- 22 **note** that the effect of the region-specific Order in Council commencing Part 9A means no regions other than Waikato and Southland will be required to have a certified FW-FP within the timeframe prescribed by the regulations until a further Order in Council is made
- 23 **note** that the policy intent is to phase rollout to regions, ensuring there is sufficient regional capability to implement the regulations
- 24 **note** that the Ministry for the Environment, in consultation with the Ministry for Primary Industries, is currently working with regional councils to finalise and further specify the order and rollout commencement dates of future regions to be included in the FW-FP system
- 25 **note** that the Minister for the Environment intends to return to Cabinet before the end of 2023 to outline a phasing approach to switch on Part 9A in other areas
- 26 **note** that the intent is to have all 16 regions across New Zealand included in the FW-FP system by the end of 2025
- 27 **authorise** the submission to the Executive Council of the Resource Management (Application of Part 9A – Freshwater Farm Plans) Order 2023
- 28 **note** that the Resource Management (Application of Part 9A – Freshwater Farm Plans) Order 2023 will come into force on 1 August 2023.

Minor Changes

- 29 **agree** to delegate authority to the Minister for the Environment and Minister of Agriculture to make minor textual, editorial, and technical changes to the Resource Management (Freshwater Farm Plans) Regulations 2023 and the Resource Management (Application of Part 9A – Freshwater Farm Plans) Order 2023 prior to final Cabinet decisions.

Authorised for lodgement

Hon David Parker
Minister for the Environment

Hon Damien O'Connor
Minister of Agriculture

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Appendix 1: Geographical phasing of the FW-FP Regulations in Waikato and Southland

Waikato:

| Order | Catchment / geographical area | Commencement date |
|-------|---|-------------------|
| 1 | Waipa FMU (PC1) | 1 August 2023 |
| 2 | Middle Waikato FMU (PC1) | 1 January 2024 |
| 2 | Upper Waikato FMU (PC1) | 1 January 2024 |
| 2 | West Coast – South (Awakino and Mokau River Catchments, several small coastal catchments south of Kiritehere) | 1 January 2024 |
| 3 | Lower Waikato FMU (PC1) | 1 July 2024 |
| 4 | Hauraki FMU | 1 January 2025 |
| 5 | Lake Taupo FMU | 1 July 2025 |
| 5 | Coromandel FMU | 1 July 2025 |
| 5 | West Coast – North (remainder of West Coast FMU) | 1 July 2025 |

Southland:

| Order | Catchment / geographical area | Commencement date |
|-------|---|-------------------|
| 1 | Aparima FMU | 1 August 2023 |
| 1 | Fiordland and Islands FMU | 1 August 2023 |
| 2 | Oreti FMU | 1 February 2024 |
| 2 | Waiau FMU | 1 February 2024 |
| 3 | Mataura FMU (including Waituna and Tokanui) | 1 July 2024 |

Appendix 2: Indicative national phasing schedule for the FW-FP Regulations

| Phase | Region | Rollout out commencement date |
|-------|---------------------|--------------------------------|
| 1 | Waikato | August 2023 |
| | Southland | |
| 2 | Otago | Early 2024 |
| | West Coast | |
| | Bay of Plenty | Mid 2024 |
| | Greater Wellington | |
| | Horizons | |
| 3 | Taranaki | Early 2025 |
| | Marlborough | |
| | Tasman/Nelson | |
| | Canterbury | Mid 2025 |
| | Chatham Islands | |
| | Northland | |
| | Auckland | |
| TBC | Tairāwhiti/Gisborne | Rollout commencement date TBC* |
| | Hawkes Bay | |

*Tairāwhiti has been removed from phase one of rollout, and Hawkes Bay has been removed from phase two given the impacts of cyclone Gabrielle and related severe weather events. The current priority for these regions is recovery.

Due to the Tairāwhiti and Hawkes Bay rollout commencement date being pushed back due to cyclone Gabrielle, officials are working with regional councils to begin the rollout of Part 9A in some regions earlier than identified. This is to ensure the workload is spread across coming years. As a result, this current schedule may change.