

In Confidence

Office of the Minister for the Environment

Office of the Minister of Agriculture

Chair, Cabinet Business Committee

Consulting on changes to the intensive winter grazing regulations

Proposal

- 1 This paper seeks agreement to consult on changes to the intensive winter grazing (IWG) regulations within the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The regulations were made under the Resource Management Act 1991 (RMA).
- 2 The changes address matters which have been identified through ongoing discussions on the implementation of these regulations.
- 3 A consultation process is proposed to seek feedback on proposed amendments to the regulations, and to understand the consequences of these proposed changes. To the extent possible, officials will overlap this engagement with the consultation on certified freshwater farm plans (FW-FPs)¹ and stock exclusion low slope mapping amendments, which runs from 26 July to 12 September 2021 [DEV-21-MIN-0160 refers].

Relation to Government priorities

- 4 The NES-F (and the regulations specific to IWG within) is a core part of the Government's commitment to improving freshwater health and management through the *Essential Freshwater* work programme [CAB-18-MIN-0296]. The Labour Party 2020 manifesto reaffirms this commitment.

Executive Summary

- 5 The NES-F sets requirements for freshwater and its ecosystems, including the management of IWG. Feedback has been received from regional councils and the primary sector that specific parts of the NES-F relating to IWG may require modification to support effective implementation.
- 6 The NES-F prevents the further expansion of IWG, and seeks to improve current IWG practice by providing three pathways for farmers to undertake it. Those pathways (the IWG regulations) are:
 - 6.1 Pathway 1: IWG activities are **permitted if a farmer complies with the default conditions** set out in the NES-F, or

¹ Certified freshwater farm plans (certified FW-FPs) are part of wider Integrated Farm Planning – but under Part 9A of the RMA will be a regulatory requirement for farmers (unlike modules on biosecurity, animal welfare and employment). The FW-FP regulations will provide a risk-based approach to farm planning to improve freshwater outcomes. Note that any references to FW-FPs in this paper are to *certified* FW-FPs.

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- 6.2 Pathway 2: IWG activities are **permitted if a farmer obtains a certified FW-FP** that achieves an equivalent (or better) outcome, or
- 6.3 Pathway 3: If neither of Pathways 1 nor 2 can be met, a farmer needs to **obtain a resource consent** for IWG activities.
- 7 Cabinet agreed to a temporary deferral (of 12 months) to the commencement of the IWG regulations while amendments to them were considered. The regulations are currently due to come into effect on 1 May 2022 [LEG-21-MIN-0041 refers].
- 8 We are now seeking agreement to consult on amendments to the IWG regulations to make them more practical to comply with, while still ensuring the environmental effects of intensive winter grazing are managed effectively.
- 9 A further deferral to the regulations commencing would be required to allow time for farmers to adjust their practices and comply with the regulations as amended. We propose a deferral of six months, with the regulations commencing on 1 November 2022.
- 10 We intend to commence consultation immediately following Cabinet decisions. Given the close relationship between the IWG proposals and FW-FP roll-out, we will overlap this engagement with the FW-FP consultation (which has already commenced) as far as possible. We will return to Cabinet seeking approval for final amendments before the end of 2021.

Background

- 11 In June 2018 Cabinet approved the *Essential Freshwater* work programme [CAB-18-MIN-0296] in order to:
- 11.1 stop further degradation of New Zealand's freshwater resources
 - 11.2 start making immediate improvements so that water quality is materially improving within five years, and
 - 11.3 reverse past damage to bring New Zealand's freshwater resources, waterways and ecosystems to a healthy state within a generation.
- 12 Intensive winter grazing (IWG) is a farming practice where large numbers of stock (cattle, sheep, deer) are confined over winter to small outdoor feeding areas planted with annual forage crops (eg swedes, kale and fodder beet). If done poorly or too extensively, IWG has serious negative effects on both animal welfare and the environment, particularly freshwater and estuary health. Compared with other farming practices, much larger amounts of soil can be lost from paddocks, ending up as sediment polluting waterways and estuaries and smothering aquatic life.
- 13 In August 2020 the *Essential Freshwater* regulatory package was gazetted including the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The NES-F is designed to achieve early change to the way high-risk activities (including IWG) are conducted.
- 14 The package is now being implemented. The Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) are engaging with external stakeholders to identify issues as they arise, and to ensure stakeholders have the support needed to effectively implement the package.

- 15 Feedback has been received from a range of stakeholders that some aspects of the NES-F relating to IWG may require modification to support effective implementation and achieve improved environmental outcomes.
- 16 The NES-F prevents the further expansion of IWG, and seeks to improve IWG practice by providing three pathways for farmers to undertake it. Those pathways are:
- 16.1 Pathway 1: IWG activities are **permitted if a farmer complies with the default conditions** set out in the NES-F, or
- 16.2 Pathway 2: IWG activities are **permitted if a farmer obtains a certified freshwater farm plan (certified FW-FP)** that achieves an equivalent (or better) outcome. Certified FW-FPs are provided for under Part 9A of the RMA
- Under this pathway, the certified FW-FP must demonstrate that any adverse effects in relation to the IWG are no greater than those allowed for by the default conditions. (Note this pathway will not be available until FW-FPs are rolled out, which will begin from mid-2022), or
- 16.3 Pathway 3: If neither of Pathways 1 nor 2 can be met, a farmer needs to **obtain a resource consent** for IWG activities
- 17 The IWG regulations comprising these pathways were originally going to commence on 1 May 2021. Regional councils (especially Environment Southland) and the primary sector identified challenges for successfully implementing the Pathway 1 default conditions. Following a meeting with us, the Southland Intensive Winter Grazing NES Advisory Group (SAG) was established to provide practical recommendations for improving implementation of the IWG regulations.
- 18 The SAG released its report in December 2020 and made several recommendations to adjust the IWG default conditions, particularly those that are weather dependent, such as pugging and replanting (ie resowing). The SAG recommended a deferral to the commencement of the IWG regulations until FW-FPs were in place.
- 19 In April 2021 Cabinet agreed to a temporary deferral (12 months) to the IWG regulations [CAB-21-MIN-0121] commencing, so they are currently due to come into effect on 1 May 2022. This did not affect the restrictions on further expansion of IWG, which still came into effect on 1 May 2021.
- 20 The deferral has:
- 20.1 enabled the primary sector, regional government, and central government officials to focus efforts on the development of an IWG module for FW-FPs, launched publicly in April 2021
- 20.2 incentivised the primary sector to demonstrate real practice change for the 2021 winter grazing season, including for animal welfare, while any changes are considered
- 20.3 allowed for regional councils to undertake increased monitoring and reporting to ensure measurable improvements by 30 April 2022, with a first quarterly progress report by regional councils being provided to us on 1 August 2021

- 20.4 allowed time for officials to consider the SAG's recommendations and potential changes to the default conditions in the regulations.

Analysis

Changes to the intensive winter grazing regulations

- 21 Implementation issues identified through stakeholder feedback relate to the default conditions which are weather-dependent (pugging and resowing), and those which are difficult to comply with practically and to enforce (mean slope, pugging, and sub-surface drains).
- 22 Where farmers:
- 22.1 cannot comply with the default conditions, or be certain in advance that they will comply, and
- 22.2 cannot obtain a certified FW-FP, because that pathway is not yet available, they must seek a resource consent to carry out IWG activities.
- 23 If, as expected, certified FW-FPs are not available when the IWG regulations come into effect on 1 May 2022, a potentially large number of resource consents might be lodged and need processing, at a cost to both farmers and regional councils.
- 24 In order to address these implementation issues, we propose to consult on amendments to the default conditions. The proposed amendments would impact both Pathway 1 and Pathway 2, because Pathway 2 relies on the Pathway 1 default conditions as a benchmark for assessing outcomes under a FW-FP. The proposed changes to the default conditions are:
- 24.1 amend to measure slope as *maximum allowable slope* instead of *mean slope* of a paddock (while keeping the existing threshold of 10 degrees)
- 24.2 amend so that farmers have to take reasonably practicable steps to manage the effects on freshwater from pugging in areas that are used for IWG. Officials will develop guidance to ensure that farmers and councils have a shared understanding of what reasonably practicable steps are
- 24.3 amend the definition of 'drains' to exclude *sub-surface* drains (as originally intended). Manage *sub-surface* drains (where known to exist) through critical source areas (see proposed new condition below)
- 24.4 remove the requirement to resow by 1 October (1 November in Otago and Southland) and instead require farmers to resow *as soon as practicable*, ie in order to minimise the amount of time that bare ground is exposed to the weather (which may vary according to circumstances and weather events), and clarify that other methods of establishing ground cover (eg companion planting) are included

Officials will also develop guidance to provide more clarity for farmers and councils as to what steps could demonstrate that farmers were resowing *as soon as practicable*

- 24.5 include a new condition requiring that critical source areas² must be protected (ie uncultivated and ungrazed). Officials will develop guidance to ensure that farmers and councils have a shared understanding of how critical source areas will be identified and protected.

Implementation timeframes

- 25 Farmers begin making on-farm decisions well in advance of the winter grazing season beginning in May each year, and they require certainty in advance as to what regulations will apply for the season. The changes to the IWG regulations proposed here will not have been finalised before those on-farm decisions need to be made for the 2022 winter grazing season.
- 26 We therefore propose a further deferral to the commencement of the IWG regulations for six months (so the regulations would begin on 1 November 2022). That should provide time for farmers to adjust their practices, cultivation and planting choices in preparation for the 2023 winter grazing season.
- 27 Note that the freshwater farm plan pathway (Pathway 2) would still be unavailable until the FW-FP regime is rolled out. Although the roll-out of the FW-FPs is expected to begin from mid-2022, it is likely to take some time before they are available to all farmers nationwide. If the roll-out of FW-FPs is staged, it could be prioritised to start in areas with high-risk IWG activity.

Long-term use of certified freshwater farm plans

- 28 Eventually all farmers will need a certified (and audited) FW-FP regardless of IWG regulations, and FW-FPs should ultimately be the best way to manage IWG. We understand there is widespread agreement within the farming community on this being the most appropriate management tool. The ability to develop bespoke mitigations through FW-FPs will give farmers the ability to manage the effects of IWG in other ways – as an alternative to complying with the default conditions.
- 29 Long term, once certified FW-FPs are available³ and being implemented successfully, we will look at phasing out the permitted activity pathway based on default conditions (Pathway 1) altogether. There would remain a single permitted activity pathway based on certified FW-FPs (with no change to the resource consent pathway). However, it is too early to consult on this. The changes we propose are instead focused on addressing implementation issues in the short term before FW-FPs are available.

Making conditions more practical while managing environmental effects

- 30 Under section 43A(3) of the RMA, national environmental standards cannot permit an activity that has significant adverse effects on the environment. While the proposed changes would make the default conditions more practical, we need to be sure they will not permit such adverse effects on the environment.
- 31 Feedback received during consultation may identify other changes to the default conditions which may be appropriate to mitigate the risk of adverse effects on the environment.

² Critical source areas are landscape features (like a gully) that accumulate runoff (sediments and nutrients) and deliver it to water bodies.

³ 'Availability' could be based on district, regional or nationwide availability.

Consulting on the slope threshold

- 32 There are views that the slope threshold should be higher or lower than the existing 10 degrees; but it is clear that sediment load increases significantly when intensive winter grazing is undertaken on higher slopes. Taking into account both practicality and expected environmental impacts, we think 10 degrees is still an appropriate standard for a default condition, and propose to keep it. However, it is easier to measure a *maximum* slope rather than a *mean* one, so we propose to move to *maximum* allowable slope.⁴
- 33 Farmers wanting to undertake intensive winter grazing on land above that threshold would require a resource consent, which would include specific and enforceable controls to mitigate the risks associated with a higher slope.

Understanding consequences

- 34 Making default conditions more practical to comply with should result in fewer applications for resource consents; but there could still be applications where farmers are unable or unwilling to comply with the amended default conditions. And some consents that are granted may end up becoming redundant once certified FW-FPs can manage the adverse effects of IWG.
- 35 We want to understand the size of this issue, as to how many consent applications may be made both before and after certified FW-FPs become available. We would also like to know about any other concerns that might arise.
- 36 However, the alternative to IWG regulations in the NES-F would be to allow IWG without any effective controls being in place (except perhaps some regional controls) until FW-FP provisions become available. This would create a hiatus of uncertain duration.

Consultation and next steps

- 37 Consultation can begin immediately following Cabinet decisions and will be conducted over a six week period by MfE and MPI. The discussion document for consultation detailing the proposals is attached as Appendix A.
- 38 The proposed changes to the IWG regulations will be one of a number of consultations occurring over the coming months which will affect the primary sector (including FW-FP regulations, changes to the stock exclusion low slope map, wetlands and resource management reform).
- 39 Bearing in mind that September is one of the busiest months in the farming calendar, we aim to make it easier for the primary sector to engage by overlapping the IWG consultation with the consultation on FW-FPs and stock exclusion low slope mapping amendments, given their close relationship.

⁴ In moving to a *maximum* slope of 10 degrees (rather than a *mean*), we expect a reduction in steeper land available for intensive winter grazing without a resource consent. Based on land used for winter grazing in 2018, officials estimate that about 3,250 ha of that land would not meet the amended default condition of grazing to a *maximum* slope of 10 degrees. We note this is a small proportion of the total area used for intensive winter grazing nationally. It is estimated that in 2018 approximately 240,000 hectares was used for winter grazing on all slopes across New Zealand (based on brassica crops).

- 40 Following consultation, we will report back to Cabinet at the end of 2021 seeking agreement to amend the NES-F, informed by that consultation.

Financial Implications

- 41 There are no financial implications associated with this paper.

Legislative Implications

- 42 Once the final policy decisions are made, the Parliamentary Counsel Office will draft necessary amendments to the NES-F, as it is a regulation under the RMA.

Regulatory Impact Statement

- 43 Treasury's Regulatory Impact Analysis Team has determined that a Regulatory Impact Statement (RIS) is required (attached as Appendix B).
- 44 MfE's Regulatory Impact Analysis Panel has reviewed the RIS "Regulatory Impact Statement: Intensive Winter Grazing", which will accompany the discussion document upon release. The Panel confirms that the level of information provided meets the quality assessment criteria for this stage of the process, and is likely to lead to effective consultation on the proposals. The consultation is expected to provide information where there are currently limits or uncertainty and later support the delivery of a Regulatory Impact Assessment supporting final decisions.

Climate Implications of Policy Assessment

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

Population Implications

- 46 There are no population implications associated with this paper.

Human Rights

- 47 Proposals in the paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Te Tiriti o Waitangi Implications

- 48 Under section 8 of the RMA, the Minister for the Environment is required to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) before exercising any power under the Act. Although the Ngāi Tahu entity TAMI was an observer at the SAG and supports the SAG report, we consider that further engagement is needed pursuant to section 8. The best approach to this may be informed by engagement on the FW-FP regulations and the stock exclusion low slope map.

Consultation

- 49 Consultation details are provided in the Analysis section above.

Communications

- 50 We will make a public announcement following Cabinet approval and release the discussion document for consultation.

Proactive Release

- 51 We will release this paper following Cabinet decisions, including any redactions as appropriate under the Official Information Act 1982.

Recommendations

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

Background

- 1 **note** that in June 2018 Cabinet approved the *Essential Freshwater* work programme [CAB-18-MIN-0296] in order to:
 - 1.1 stop further degradation of New Zealand's freshwater resources
 - 1.2 start making immediate improvements so that water quality is materially improving within five years, and
 - 1.3 reverse past damage to bring New Zealand's freshwater resources, waterways and ecosystems to a healthy state within a generation
- 2 **note** that intensive winter grazing (IWG) is a high-risk farming practice where large numbers of stock (cattle, sheep, deer) are confined over winter to small feeding areas planted with annual forage crops (eg, swedes, kale and fodder beet), which can result in serious negative effects on animal welfare and the environment
- 3 **note** that in August 2020 the *Essential Freshwater* regulatory package was gazetted, including the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F), directed at making early change to the way high-risk activities (including IWG) are conducted
- 4 **note** that the *Essential Freshwater* package is now being implemented and feedback has been received that parts of the NES-F relating to IWG may require modification to support effective implementation and achieve improved environmental outcomes
- 5 **note** that the NES-F prevents the further expansion of IWG and seeks to improve practice by providing three pathways for farmers to undertake IWG. Those pathways (the IWG regulations) are:
 - 5.1 Pathway 1: IWG activities are **permitted if a farmer complies with the default conditions** set out in the NES-F, or
 - 5.2 Pathway 2: IWG activities are **permitted if a farmer obtains a certified freshwater farm plan (certified FW-FP)** that achieves an equivalent (or better) outcome, or
 - 5.3 Pathway 3: If neither of Pathways 1 nor 2 can be met, a farmer needs to **obtain a resource consent** for IWG activities

- 6 **note** that a Southland Intensive Winter Grazing NES Advisory Group released a report in December 2020 making several recommendations to adjust the default conditions, including a deferral to the regulations until these changes could be made
- 7 **note** that in April 2021 Cabinet agreed to a temporary deferral (of 12 months) to the IWG regulations commencing, so they are currently due to come into effect on 1 May 2022; but that the deferral did not affect the restrictions on the expansion of IWG, which still came into effect on 1 May 2021 [CAB-21-MIN-0121]
- 8 **note** that the temporary deferral to the IWG regulations has:
- 8.1 enabled the primary sector, regional government, and central government officials to focus efforts on the development of an IWG module for FW-FPs, launched publicly in April 2021
 - 8.2 incentivised the primary sector to demonstrate real practice change for the 2021 winter grazing season, including for animal welfare, while any changes are considered
 - 8.3 allowed for regional councils to undertake increased monitoring and reporting to ensure measurable improvements by 30 April 2022, with a first quarterly progress report by regional councils being provided to us on 1 August 2021, and
 - 8.4 allowed time for officials to consider the SAG's recommendations and potential changes to default conditions in the regulations

Changes to the intensive winter grazing regulations

- 9 **note** that if, as expected, certified FW-FPs are not available when the IWG regulations come into effect on 1 May 2022, a potentially large number of resource consents might be lodged and need processing, at a cost to both farmers and regional councils
- 10 **agree** to consult on amendments to the default conditions, to ensure the IWG regulations can be implemented in practice while managing the adverse effects of IWG. The proposed changes to the default conditions are:
- 10.1 amend to measure slope as *maximum allowable slope* instead of *mean slope* of a paddock (while keeping the existing threshold of 10 degrees)
 - 10.2 amend so that farmers have to take reasonably practicable steps to manage the effects on freshwater of pugging in areas that are used for IWG. Officials will develop guidance to ensure that farmers and councils have a shared understanding of what reasonably practicable steps are
 - 10.3 amend the definition of 'drains' to exclude *sub-surface* drains (as originally intended), and manage *sub-surface* drains (where known to exist) through critical source areas (see proposed new condition below)
 - 10.4 remove the requirement to resow by 1 October (1 November in Otago and Southland) and instead require farmers to resow *as soon as practicable* (which may vary according to circumstances and weather events), and clarify that other methods of establishing ground cover (eg companion planting) are included

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- 10.5 include a new condition to identify and protect critical source areas (ie uncultivated and ungrazed)
- 11 **note** that in respect of recommendation 10.4, officials will develop guidance to provide more clarity for farmers and councils as to what steps could demonstrate that farmers were resowing as soon as practicable
- 12 **note** that in respect of recommendation 10.5, officials will develop guidance to ensure that farmers and councils have a shared understanding of how critical source areas will be identified and protected
- 13 **note** that a further deferral to the commencement of the IWG regulations of six months is proposed (so the regulations would begin on 1 November 2022), to allow time for farmers to adjust their practices to comply with amended regulations
- 14 **note** that the certified FW-FP pathway (Pathway 2) would still be unavailable until the FW-FP regime is rolled out, expected to begin from mid-2022 but likely to take some time before being available to all farmers nationwide; but if staged could be prioritised to start in areas with high-risk IWG activity
- 15 **note** that the NES-F cannot permit an activity that will have significant adverse effects on the environment, and that any changes to make the default conditions (Pathway 1) more practicable would need to ensure this does not occur

Consultation and next steps

- 16 **note** that consultation can begin immediately following Cabinet decisions and will be conducted over a six week period by the Ministry for the Environment and the Ministry for Primary Industries
- 17 **note** that it is intended to make it easier for the primary sector to engage by aligning with consultation on FW-FPs and stock exclusion low slope mapping amendments
- 18 **approve** the release of the discussion document (Appendix A to this paper) as the basis of consultation on changes to the IWG regulations within the NES-F
- 19 **agree** to delegate authority to the Minister for the Environment and Minister of Agriculture to make appropriate textual, editorial, design and technical changes to the discussion document before consultation
- 20 **note** that the Regulatory Impact Statement for the proposal is attached as Appendix B to this paper
- 21 **note** that following consultation we will report back to Cabinet before the end of 2021 seeking agreement to amend the NES-F.

Authorised for lodgement

Hon David Parker
Minister for the Environment

IN C O N F I D E N C E

Hon Damien O'Connor
Minister of Agriculture

Released under the Official Information Act 1982

Appendix A – Consultation Discussion Document

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Appendix B – Regulatory Impact Statement

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