



PROACTIVE RELEASE COVERSHEET

Minister	Hon David Parker	Portfolio	Environment
Name of package	Natural and Built Environment Bill SOP: Inclusion of Freshwater Farm Plan Provisions, and Update on Development of the National Planning Framework	Date to be published	24/10/2023

List of documents that have been proactively released

Date	Title	Author
24 July 2023	CAB-23-MIN-0319: Natural and Built Environment Bill SOP: Inclusion of Freshwater Farm Plan Provisions, and Update on Development of the National Planning Framework	Cabinet Office
24 July 2023	Cabinet paper: Natural and Built Environment Bill SOP: Inclusion of Freshwater Farm Plan Provisions, and Update on Development of the National Planning Framework	Ministry for the Environment

Information redacted

NO



Cabinet

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.

Natural and Built Environment Bill SOP: Inclusion of Freshwater Farm Plan Provisions, and Update on Development of the National Planning Framework

Portfolio **Environment**

On 24 July 2023, Cabinet:

- 1 **noted** that the Natural and Built Environment Bill (NBE Bill) holds a category 2 priority on the 2023 Legislation Programme (must be passed before the election);
- 2 **noted** that the NBE Bill has had its second reading, and that its consideration in the Committee of the Whole House is pending;
- 3 **noted** that the Minister for the Environment will be introducing a Supplementary Order Paper (SOP) that amends the NBE Bill;
- 4 **noted** that the Minister for the Environment proposes to include in the SOP changes to the freshwater farm plan (FW-FP) subpart of the NBE Bill, and the corresponding part of the Resource Management Act 1991 (RMA);
- 5 **noted** that the Parliamentary Counsel Office has prepared the SOP changes;
- 6 **noted** that the SOP changes give effect to recent Cabinet decisions to apply current or modified land use area thresholds to particular land use types where this is considered necessary to achieve the purpose of Part 9A of the RMA or Part 6, Subpart 2 of the NBE Bill [CAB-23-MIN-0307];
- 7 **noted** that the SOP changes also give effect to Cabinet's decision to provide discretion to the Minister for the Environment (in consultation with the Minister of Agriculture) to recommend an Order in Council to give effect to the decisions referred to in paragraph 6;
- 8 **agreed** that the SOP include the changes referred to paragraph 6 and 7;

Development of the National Planning Framework

- 9 **noted** that in August 2023, the Minister for the Environment intends to bring to Cabinet a paper on the development of the National Planning Framework.

Rachel Hayward
Secretary of the Cabinet

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Office of the Minister for the Environment

Chair, Cabinet

Natural and Built Environment Bill SOP: inclusion of freshwater farm plan provisions, and update on development of the National Planning Framework

Proposal

- 1 I will be introducing a Supplementary Order Paper (SOP) that amends the Natural and Built Environment Bill 2022 186—2 (NBE Bill) in the Committee of the Whole House. The NBE Bill will replace the Resource Management Act 1991 (RMA).
- 2 The NBE Bill has had its second reading, and its consideration in the Committee of the Whole House is pending.
- 3 This paper seeks approval to include, in the SOP, changes to the freshwater farm plan (FW-FP) subpart of the NBE Bill, and the corresponding part of the RMA.¹
- 4 The changes would provide discretion to the Minister for the Environment (in consultation with the Minister of Agriculture) to modify the land use area thresholds in Part 6, Subpart 2 of the NBE Bill and Part 9A of the RMA (which determine when a farm must have an FW-FP) and apply them to particular land use types. This would be done through an Order in Council (OIC) process.
- 5 That would allow for further implementation flexibility in the FW-FP system. Larger properties could, for example, be brought into the system earlier than smaller properties.
- 6 I am also taking this opportunity to update Cabinet on progress being made on the development of the National Planning Framework (NPF) under the NBE Bill. Existing RMA national direction will be transitioned into the NPF, and supplemented with some new material.

Changes to freshwater farm plan provisions in the NBE Bill and RMA

Freshwater farm plan implementation is occurring alongside resource management reform

- 7 FW-FPs are a key component of the Essential Freshwater package, which is currently being implemented and will be carried over to the new resource management system.
- 8 Part 9A of the RMA sets out requirements for FW-FPs. This includes area thresholds by land use that trigger the requirement for a farm operator to obtain a FW-FP. Part 9A does not apply to a region, district or part of New Zealand until activated by an OIC – this enables implementation to occur in a phased manner.
- 9 The current land use area thresholds do not allow for different thresholds to be considered when FW-FPs are rolled out in regions. While this is likely to be appropriate in most circumstances, there may be specific regions or catchments where further flexibility is needed.

¹ No further authorisation is required for other subject matter in the SOP.

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Changes to provide further implementation flexibility

- 10 Cabinet recently agreed to a policy change to provide the Minister for the Environment (in consultation with the Minister of Agriculture) discretion to modify the land use area thresholds in Part 6, Subpart 2 of the NBE Bill and Part 9A of the RMA (which determine when a farm must have a FW-FP) and apply them to particular land use types through an OIC process [CAB-23-MIN-0307].
- 11 This policy change requires the following amendments to the NBE Bill (Part 6, Subpart 2) and the RMA (Part 9A):
 - 11.1 changes to clause 401 / section 217C to enable an OIC to affect only some of the farms in a region, district or part of New Zealand (ie specify that one or more thresholds in clause 402 / section 217D apply);
 - 11.2 changes to clause 401 / section 217C and clause 402 / section 217D to enable the Minister for the Environment to set additional or different thresholds for a region, district or part of New Zealand when recommending an OIC.
- 12 These changes have now been drafted into the extract of the SOP at **Appendix 1**.
- 13 A short-form supplementary departmental disclosure statement is at **Appendix 2**.

Update on development of the National Planning Framework

- 14 The SOP will extend the statutory timeframe to notify the proposal for the transitional National Planning Framework (NPF) from 6 to 8 months, and require me to release an engagement draft. I have made all the substantive decisions necessary for drafting this NPF engagement draft, and Parliamentary Counsel Office is in the final stages of preparing it.
- 15 Next month, I will bring a further paper on NPF development to Cabinet. This will be an important next step in the roll out of the new resource management system, and would lead to the much-anticipated draft NPF being made public in September 2023.
- 16 I would invite feedback from Māori groups to ensure they had an early opportunity to engage with the proposed NPF, and Post Settlement Government Entities in particular in accordance with existing Treaty settlement commitments. I would also engage with local government as key implementers of the NPF. This engagement process would provide an opportunity to refine the transitional NPF proposal in readiness to publicly notify it in early 2024 for consideration by a board of inquiry.

Impact analysis

- 17 An addendum to the Regulatory Impact Statement, which supported previous Cabinet decisions on the Essential Freshwater package, was considered by Cabinet when it agreed to this policy change [CAB-23-MIN-0307]. The Ministry for Primary Industries and Ministry for the Environment joint Regulatory Impact Analysis panel assessed the addendum as fully meeting quality assurance criteria.

Consultation

- 18 The intention is to implement the FW-FP policy change through the SOP on the NBE Bill. Consequently, there has not been sufficient time to initiate formal consultation. However, the Ministry for the Environment has ensured key stakeholders have been

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updated on developments. The importance of preserving implementation flexibility was a key issue raised by stakeholders during consultation on the development of FW-FP regulations.

- 19 The following agencies were informed of this paper: the Ministry for Primary Industries, the Department of Conservation, the Department of Prime Minister and Cabinet, and Toitū Te Whenua/Land Information New Zealand.

Binding on the Crown

- 20 The FW-FP changes do not affect the existing provisions in the NBE Bill that bind the Crown.

Parliamentary stages

- 21 The NBE Bill holds a category 2 priority on the 2023 Legislation Programme (must be passed before the election). The Bill has had its second reading, and its consideration in the Committee of the Whole House is pending.

Proactive Release

- 22 I intend to proactively release this Cabinet paper on the Ministry for the Environment website following the release of the SOP.

Recommendations

I recommend that Cabinet:

Natural and Built Environment Bill SOP

- 1 **note** that the Natural and Built Environment Bill (NBE Bill) holds a category 2 priority on the 2023 Legislation Programme (must be passed before the election);
- 2 **note** that the NBE Bill has had its second reading, and that its consideration in the Committee of the Whole House is pending;
- 3 **note** that the Minister for the Environment will be introducing a Supplementary Order Paper (SOP) that amends the NBE Bill;
- 4 **note** that the Minister for the Environment proposes to include in the SOP changes to the freshwater farm plan (FW-FP) subpart of the NBE Bill, and the corresponding part of the Resource Management Act 1991 (RMA);
- 5 **note** that the Parliamentary Counsel Office has prepared the SOP changes;
- 6 **note** that the SOP changes give effect to recent Cabinet decisions to apply current or modified land use area thresholds to particular land use types where this is considered necessary to achieve the purpose of Part 9A of the RMA or Part 6, Subpart 2 of the NBE Bill [CAB-23-MIN-0307];
- 7 **note** that the SOP changes also give effect to Cabinet's decision to provide discretion to the Minister for the Environment (in consultation with the Minister of Agriculture) to recommend an Order in Council to give effect to the decisions referred to in recommendation 6;

I N C O N F I D E N C E

8 **agree** that the SOP include the changes referred to recommendations 6 and 7;

Development of the National Planning Framework

9 **note** that in August 2023, the Minister for the Environment intends to bring to Cabinet a paper on the development of the National Planning Framework.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Appendix 1 – Supplementary Order Paper extract

Subpart 2—Freshwater farm plans

399 Purpose

The purpose of this subpart is to better control the adverse effects of farming on freshwater and freshwater ecosystems within specified districts, regions, or parts of New Zealand through the use of certified freshwater farm plans.

Compare: 1991 No 69 s 217A

400 Interpretation

In this subpart, unless the context otherwise requires,—

auditor means a person who—

- (a) is appointed under **section 409** or by an approved industry organisation; and
- (b) meets the criteria prescribed in regulations made under **section 411(1)(h)**

certification and audit services means the services prescribed for the purposes of **section 409A** in regulations (if any) prescribed under **section 411**

certified freshwater farm plan means a freshwater farm plan certified under **section 405** or, as amended from time to time in accordance with **section 403(2) or (3)**

certifier means a person who—

- (a) is appointed under **section 409** or by an approved industry organisation; and
- (b) meets the criteria prescribed in regulations made under **section 411(1)(h)**

farm means a farm where all or part of the farm is ~~under~~—

- (a) arable land use; or
- (b) horticultural land use; or
- (c) pastoral land use; or
- (d) other agricultural land use prescribed in regulations; or
- (e) any combination of the land uses listed in this definition

farm operator means the person with ultimate responsibility for the operation of a farm

horticultural land use means the use of land to grow food or beverage crops for human consumption (other than arable crops), or flowers for commercial supply

pastoral land use means the use of land for the grazing of livestock

regulations means ~~regulations made under this subpart~~

relevant regional council means the regional council (as defined in **section 7**) in whose jurisdiction the farm is located

specified instrument means any designation, ~~provision in the national planning framework,~~ regulations made under a relevant empowering provision in this Act, including the national planning framework, resource consent, rule in a plan, or water conservation order;

statutory land use area threshold—

- (a) in relation to a land use described in any of **paragraphs (a), (b), (c), and (e) of section 402(1)**, means the area specified in that section for that land use:
- (b) in relation to the land use described in **section 402(1)(d)**, means the area prescribed in regulations made under **section 411** for that land use.

Compare: 1991 No 69 s 217B

401 Application of this subpart

- (1) This subpart applies only—
 - (a) to a region, district, or part of New Zealand specified in an Order in Council under this section; and
 - (b) on and from the date specified in the Order in Council.
- (2) The Governor-General may, by Order in Council, on the recommendation of the Minister, determine—
 - (a) that this subpart applies to a specified district, region, or part of New Zealand; and
 - (b) the date on which this subpart applies to that district, region, or part of New Zealand.
- (2A) The Governor-General may, by Order in Council, on the recommendation of the Minister, in relation to a region, district, or part of New Zealand to which this subpart applies,—
 - (a) disapply a statutory land use area threshold; or
 - (b) disapply a statutory land use area threshold and prescribe a higher land use area threshold in its place.
- (3) Before making a recommendation under **subsection (2) or (2A)**, the Minister must—
 - (a) be satisfied that ~~regulations are~~ the order is necessary to achieve the purpose of this subpart in the specified district, region, or part of New Zealand; and
 - (b) consult the Minister of Agriculture.

- (4) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1991 No 69 s 217C

402 Farm must have certified freshwater farm plan if it meets land use threshold

- (1) A farm must have a certified freshwater farm plan if—
- (a) 20 or more hectares of the farm is arable land use; or
 - (b) 5 or more hectares of the farm is horticultural land use; or
 - (c) 20 or more hectares of the farm is pastoral land use; or
 - (d) a prescribed area of the farm is other agricultural land use prescribed in regulations made under **section 411**; or
 - (e) 20 or more hectares of the farm is a combination of any 2 or more of the land uses described above.

(1A) However,—

- (a) if an order made under **section 401(2A)(a)** disapplies a statutory land use area threshold, a farm is not subject to that threshold; and
 - (b) if an order made under **section 401(2A)(b)** disapplies a statutory land use area threshold and prescribes a higher land use area threshold in its place, a farm is subject to the higher threshold.
- (2) A certified freshwater farm plan applies to the entire farm.

Compare: 1991 No 69 s 217D

403 Main duties of farm operators

- (1) A farm operator of a farm that is required to have a certified freshwater farm plan must—
- (a) prepare a freshwater farm plan in accordance with this subpart and the regulations made under **section 411**; and
 - (b) submit the plan to a certifier for certification; and
 - (c) ensure that the farm operates in compliance with the certified freshwater farm plan; and
 - (d) arrange for the farm to be audited in accordance with this subpart and regulations for compliance with the certified freshwater farm plan.
- (2) A farm operator must keep the certified freshwater farm plan fit for purpose by—
- (a) amending the plan as necessary to reflect any changes in the farm; and
 - (b) amending the plan as necessary to comply with this subpart and regulations.

- (3) A farm operator must amend and recertify a certified freshwater farm plan if any circumstances prescribed by regulations made under **section 411** apply.

Compare: 1991 No 69 s 217E

404 Contents of freshwater farm plan

- (1) A freshwater farm plan must—
- (a) identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems; and
 - (b) specify requirements that—
 - (i) are appropriate for the purpose of avoiding, minimising, or remediating, ~~or mitigating~~ the adverse effects of those activities on freshwater and freshwater ecosystems; and
 - (ii) are clear and measurable; and
 - (c) demonstrate how any freshwater farm plan outcomes prescribed in ~~the~~ regulations made under **section 411** are to be achieved; and
 - (d) comply with any other requirements in ~~the~~ regulations made under **section 411**.
- (2) *See **section 410*** (which states when a specified instrument prevails over a freshwater farm plan).

Compare: 1991 No 69 s 217F

405 Certification of freshwater farm plan

- (1) The farm operator must, within the prescribed time frame, submit a freshwater farm plan to a certifier.
- (2) The certifier must certify a freshwater farm plan if the certifier is satisfied that the plan complies with the requirements in **section 404**.
- (3) The certifier must, as soon as practicable, notify the relevant regional council—
- (a) that the freshwater farm plan has been certified; and
 - (b) of the date on which it was certified.
- (4) This section applies, with any necessary modifications, to a certified freshwater farm plan that is required by regulations made under **section 411** to be amended and recertified.

Compare: 1991 No 69 s 217G

406 Audit of farm for compliance with certified freshwater farm plan

- (1) A farm operator must—
- (a) arrange, within the prescribed time frame, for an auditor to audit the farm for compliance with the certified freshwater farm plan; and

- (b) arrange for further audits to be carried out at the frequency required by the regulations made under **section 411**.
- (2) The audit must be completed in the manner prescribed in regulations made under **section 411**.
- (3) The farm operator must provide the auditor with—
 - (a) an up-to-date copy of the certified freshwater farm plan and any relevant information; and
 - (b) any further information that the auditor reasonably requests for the purpose of the audit; and
 - (c) reasonable access to the farm (or any part of it) for the purpose of any audit inspection.
- (4) After completing the audit, the auditor must—
 - (a) provide the farm operator with a report of the auditor’s findings on whether the farm achieves compliance with the certified freshwater farm plan; and
 - (b) if the auditor finds that the farm achieves compliance, provide that report to the relevant regional council.
- (5) If the auditor finds that the farm fails to achieve compliance with the certified freshwater farm plan,—
 - (a) the auditor’s report—
 - (i) must include reasons why the farm failed to achieve compliance; and
 - (ii) must specify reasonable time frames by which compliance must be achieved; and
 - (iii) may include recommendations on how compliance may be achieved; and
 - (b) the auditor must give the farm operator a reasonable opportunity to respond to the report; and
 - (c) the auditor must, after the prescribed period has expired, provide the farm operator and the relevant regional council with a final report—
 - (i) setting out the auditor’s findings (including the findings of the first report); and
 - (ii) stating whether compliance was achieved; and
 - (iii) including any recommendations from the auditor.

Compare: 1991 No 69 s 217H

407 Functions of regional councils

- (1) For the purposes of this subpart, a regional council has the following functions:

- (a) to enforce the observance of the requirements of this subpart and ~~the regulations made under **section 411**~~ to the extent that their powers under this Act enable them to do so; and
 - (b) to monitor compliance by farm operators with their duties under this subpart and with any requirements in ~~the regulations made under **section 411**~~; and
 - (c) to receive notifications of freshwater farm plans that have been certified; and
 - (d) to receive audit reports and related notifications from auditors; and
 - (e) to approve industry organisations to provide certification and audit services; and
 - (f) to appoint certifiers under **section 409**; and
 - (g) to monitor and audit approved industry organisations for compliance with the standards issued under **section 409A(2)**.
- (2) A regional council may require a farm operator to produce a certified freshwater farm plan for inspection.

Compare: 1991 No 69 s 217I

408 Records that must be kept by regional council

A regional council must keep and maintain, in relation to each farm in its jurisdiction, a record of—

- (a) whether the farm has a certified freshwater farm plan; and
- (b) the date that the plan was last certified; and
- (c) the date that the farm was last audited for compliance with the plan; and
- (d) any other information required by ~~the regulations made under **section 411**~~.

Compare: 1991 No 69 s 217J

409 Regional council must appoint certifiers and auditors

- (1) A regional council must—
 - (a) appoint 1 or more certifiers; and
 - (b) appoint 1 or more auditors.
- (2) A regional council may make an appointment under this section only if satisfied that the criteria prescribed in the regulations made under **section 411** have been met.

Compare: 1991 No 69 s 217K

409A Regional council may approve industry organisation to provide certification or audit services

- (1) A regional council may give approval to an industry organisation that applies to the council to provide certification and audit services under this subpart if the council is satisfied that the organisation meets the standards issued under **subsection (2)**.
- (2) The Minister may, by notice in the *Gazette*, issue standards by which industry organisations must be assessed for the purpose of determining their suitability to be an approved industry organisation.
- (3) Standards may also—
 - (a) set out the kind of organisation eligible to be approved for the purposes of this subpart; and
 - (b) include content and processes to provide for compliance with the standards, as for example, by requiring the industry to run training programmes and ensuring that conflicts are appropriately managed.
- (4) A regional council may request information from an approved industry organisation that the council considers reasonably necessary for carrying out their ~~function~~ functions under **section 407(1)(e) and (g)**.

410 Relationship between certified freshwater farm plan and specified instruments

- (1) A certified freshwater farm plan may contain a requirement that—
 - (a) relates to an activity carried out on the farm (an **activity**) even if there is no similar requirement relating to that activity in a provision of a specified instrument:
 - ~~(b) restricts an activity more than a provision of a specified instrument.~~
 - (b) restricts an activity more than the activity would be restricted by the provision of a specified instrument.
- (2) However, if a provision of a specified instrument restricts an activity more than a requirement of a freshwater farm plan, the provision of the specified instrument prevails.
- (3) To avoid doubt, compliance with a requirement of a certified freshwater farm plan—
 - (a) does not of itself authorise a person to undertake an activity:
 - (b) may be specified or included as a requirement or condition in any specified instrument relating to an activity.

Compare: 1991 No 69 s 217L

411 Regulations relating to freshwater farm plans

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister after consulting the Minister of Agriculture, make regulations that—
- (a) prescribe crops for the purpose of the definition of arable land use in **section 7**;
 - (b) prescribe agricultural land uses for the purpose of the definition of farm in **section 400**;
 - (c) prescribe the area of land described in **section 402(1)(d)** (in relation to agricultural land use prescribed under **paragraph (b)**);
 - (d) provide for the content of a freshwater farm plan, including ~~(without limitation)~~ specifying—
 - (i) any requirements, including any actions, criteria, methods, or thresholds for the purpose of identifying, measuring, avoiding, minimising, or remedying, ~~or mitigating~~ any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems; and
 - (ii) freshwater farm plan outcomes that must be achieved for the purpose of avoiding, minimising, or remedying ~~or mitigating~~ those adverse effects on freshwater and freshwater ecosystems; and
 - (iii) any other information that must be included in the plan for the purpose of this subpart:
 - (e) provide for the form and manner in which a freshwater farm plan must be certified, including (without limitation) prescribing—
 - (i) time frames that must be complied with by the farm operator and certifier; and
 - (ii) any fees payable by the farm operator or the manner of calculating those fees:
 - (f) prescribe the circumstances in which a certified freshwater farm plan must be amended and recertified:
 - (fa) prescribe requirements for the approval of industry organisations under **section 409A**, including any further obligations for approved industry organisations:
 - (g) for the purpose of audits of farms for compliance with certified freshwater farm plans, prescribe—
 - (i) the time frame by which a farm must be audited; and
 - (ii) the frequency at which those audits must be carried out; and
 - (iii) the manner in which an audit must be completed; and

- (iv) the period after which the auditor must provide their final report under **section 406(5)(c)**; and
 - (v) any matters that an auditor must take into account when considering whether the farm achieves compliance with the certified freshwater farm plan; and
 - (vi) any fees payable by the farm operator or the manner of calculating those fees:
- (h) prescribe criteria that apply to the appointment of a person as an auditor or certifier and their continuation in that role:
 - (i) require auditors, certifiers, and farm operators to supply prescribed information to regional councils for the purpose of **section 407**:
 - (j) prescribe information that a regional council must keep in relation to farms in its jurisdiction:
 - (k) prescribe infringement offences for the contravention of, or non-compliance with, a provision of this subpart or of any regulations made under this section:
 - (l) provide for any other matters that are contemplated by, or necessary for giving full effect to, this subpart and for its due administration.
- (2) Regulations under this section may apply generally or to specified districts, regions, or parts of New Zealand.
 - (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1991 No 69 s 217M

Subpart 3—Effect of certain nutrients on quality and ecosystems of freshwater

412 Purpose

- (1) The purpose of this subpart is to enable better monitoring of actions taken to improve freshwater quality and freshwater ecosystems.
- (2) To inform the planning and management for freshwater under this Act, information must be collected on the sale of nitrogenous fertilisers.

Compare: 1991 No 69 s 217N

413 Meaning of nitrogenous fertiliser

In this subpart, **nitrogenous fertiliser** means a fertiliser containing any nitrogenous substance, whether solid or liquid in form, that—

- (a) is applied to plants or soil as a source of nitrogen nutrition for plants; and
- (b) comprises more than 5% of nitrogen weight for weight.

Compare: 1991 No 69 s 217O

Appendix 2 – Disclosure Statement

Short-Form Supplementary Departmental Disclosure Statement

Natural and Built Environment Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

This supplementary disclosure statement provides a limited supplement to the original disclosure statement for the Natural and Built Environment (NBE) Bill dated 10 November 2022, which can be found at this link:
<http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=186>

This supplementary disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 July 2023

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

1.1. Was the Ministry of Justice consulted about these provisions?	NO
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Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
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Clause 402 of the NBE Bill / section 217D of the Resource Management Act 1991 (RMA) set land use thresholds where certified freshwater farm plans are required.

The proposed amendments allow the Minister for the Environment to set larger thresholds than those currently specified in clause 402 of the NBE Bill / section 217D of the RMA when recommending an Order in Council (OIC) to apply Part 9A and the Freshwater Farm Plan Regulations 2023 (the Regulations) to an area (under clause 401 of the NBE Bill / section 217C of the RMA).

The amendments allow the Minister for the Environment to consider the land use thresholds when recommending an OIC – the amendments could also grant an exemption to the size of farm the Regulations would ordinarily apply to.

The current land use area thresholds do not allow for different thresholds to be considered when Part 9A (or Subpart 2 of Part 6 of the NBE Bill) and the Regulations are applied through an OIC. It is considered that additional flexibility around these thresholds is needed as the Regulations are implemented, so regulatory requirements can be tailored to meet the unique needs of each region, district or part of New Zealand.

This power is constrained and very limited in scope. It would only allow the Minister for the Environment to set larger land use thresholds than those currently specified. No additional groups would be affected by the amendment, nor would any existing regulated parties be more materially impacted or subject to further penalties due to this change.

This power would only be exercised by the Minister for the Environment, after consulting with the Minister of Agriculture, recommending an OIC to the Governor-General. Cabinet would scrutinise any exercise of this power.

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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