



PROACTIVE RELEASE COVERSHEET

Ministers	Hon Damien O'Connor Hon David Parker	Portfolios	Agriculture Environment
Name of package	Natural and Built Environment Bill: Supplementary Order Paper relating to Freshwater Farm Plans	Date to be published	24/10/2023

List of documents that have been proactively released

Date	Title	Author
17 July 2023	CAB-23-MIN-0307: Natural and Built Environment Bill: Supplementary Order Paper Relating to Freshwater Farm Plans	Cabinet Office
17 July 2023	Cabinet paper: Natural and Built Environment Bill: Supplementary Order Paper Relating to Freshwater Farm Plans	Ministry for Primary Industries and 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: Supplementary Order Paper Relating to Freshwater Farm Plans

Portfolios **Agriculture / Environment**

On 17 July 2023, Cabinet:

- 1 **noted** that the Natural and Built Environment Bill (NBE Bill) is awaiting its second reading;
- 2 **noted** that the purpose of Part 9A of the Resource Management Act 1991 (RMA) 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 Freshwater Farm Plans (FW-FPs);
- 3 **noted** that Part 9A does this by specifying key features of the FW-FP system, including land use area thresholds that trigger the requirement for a farm operator to obtain a certified FW-FP;
- 4 **noted** that Part 9A does not apply to a region, district or part of New Zealand until activated by an Order in Council (OIC) made under section 217C of the RMA;
- 5 **noted** that this enables FW-FP implementation to occur in a phased manner, with the intention that the FW-FP regulations will commence across the entirety of all 16 regions of New Zealand by the end of 2025;
- 6 **noted** that Part 9A is carried forward to the NBE Bill as Part 6, Subpart 2 of that Bill;
- 7 **noted** that the Parliamentary Counsel Office (PCO) is currently preparing a supplementary order paper (SOP) to make amendments to the NBE Bill at the Committee of the Whole House stage;
- 8 **noted** that it would be desirable through this SOP to make a change to the FW-FP process in both the RMA (through Schedule 15 of the NBE Bill) and the NBE Bill;
- 9 **noted** that this change would provide discretion to the Minister for the Environment (in consultation with the Minister of Agriculture) to apply current or modified land use area thresholds to particular land use types in making a recommendation for an OIC, where this is considered necessary to achieve the purpose of Part 9A of the RMA or Part 6, Subpart 2 of the NBE Bill;
- 10 **noted** that the change could, for example, enable larger properties to be brought into the FW-FP system earlier than smaller properties;

- 11 **noted** this discretion would not allow for FW-FPs to be required in areas smaller in size than those thresholds currently specified in the in section 217D;
- 12 **agreed** to make the following changes to the NBE Bill (Part 6, Subpart 2) and the RMA (Part 9A):
- 12.1 changes to clause 401 / s 217C to enable an OIC to affect only some of the farms in a region, district or part of New Zealand (i.e. specify that one or more thresholds in clause 402 / s 217D apply);
 - 12.2 changes to clause 401 / section 217C and clause 402 / section 217D to enable the Minister to set additional or different thresholds for a region, district or part of New Zealand when recommending an OIC;
- 13 **invited** the Minister for the Environment (the Minister) to issue drafting instructions to PCO to give effect to the decision in paragraph 12 above;
- 14 **noted** that the Minister intends to bring the drafted SOP directly to Cabinet on 24 July 2023;
- 15 **authorised** the Minister to implement other minor and technical changes required by PCO for drafting purposes;
- 16 **noted** the Minister's intention to publish this paper on the Ministry for the Environment's website following the release of the SOP.

Rachel Hayward
Secretary of the Cabinet

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Office of the Minister of Agriculture

Office of the Minister for the Environment

Chair, Cabinet

Natural and Built Environment Bill: Supplementary Order Paper relating to Freshwater Farm Plans

Proposal

- 1 This paper seeks approval to instruct the Parliamentary Counsel Office (PCO) to draft a Supplementary Order Paper (SOP) provision to amend the freshwater farm plan (FW-FP) subpart of the Natural and Built Environment Bill (NBE Bill), and the corresponding part of the Resource Management Act 1991 (RMA), in the Committee of the Whole House stage of the NBE Bill.
- 2 The SOP provision 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.
- 3 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.

Background

- 4 On 1 July 2020 Parliament inserted a new Part 9A into the RMA to provide the legislative basis for the subsequent introduction of the Resource Management (Freshwater Farm Plan) Regulations 2023 (the FW-FP regulations).
- 5 The purpose of Part 9A 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 FW-FPs.
- 6 Part 9A does this by specifying key features of the FW-FP system, including the area thresholds by land use that trigger the requirement for a farm operator to obtain a certified FW-FP.
- 7 Although Part 9A of the RMA came into force on 1 July 2020, it does not apply to a region, district or part of New Zealand until activated by an OIC made under section 217C of the RMA.
- 8 This approach enables FW-FP implementation to occur in a phased manner, allowing sufficient time for the development of the FW-FP certifier and auditor workforce and other supporting implementation mechanisms. The intention is that the FW-FP regulations will commence across the entirety of all 16 regions of New Zealand by the end of 2025.
- 9 Part 9A specifies which farms must have certified FW-FPs. Section 217D provides that a farm must have a certified FW-FP (for the entire farm) if it meets any of the following land use area thresholds:
 - 9.1 20 or more hectares of the farm is arable land use; or

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- 9.2 5 or more hectares of the farm is horticultural land use; or
 - 9.3 20 or more hectares of the farm is pastoral land use; or
 - 9.4 20 or more hectares of the farm is a combination of any 2 or more of the land uses described above.¹
- 10 Part 9A of the RMA is mirrored in the corresponding part of the NBE Bill (Part 6, Subpart 2), which is currently awaiting its second reading.

Analysis

Creating discretion for further rollout flexibility into the freshwater farm plan system

- 11 The current land use area thresholds do not allow for different thresholds to be considered when FW-FPs are rolled out. While this is likely to be appropriate in most circumstances, there may be specific regions or catchments where it would be appropriate to be able to vary rollout via size.
- 12 Officials have considered additional options to provide flexibility when land use thresholds are applied so that FW-FP requirements can be tailored to meet the unique needs of each region, district or part of New Zealand where the FW-FP regulations are due to commence.
- 13 We propose to enable the Minister for the Environment (in consultation with the Minister for Agriculture) to modify the land use area thresholds specified in clause 402 of the NBE Bill / section 217D of the RMA and apply them to particular land use types where that is considered necessary to achieve the purpose of Part 6, Subpart 2 of the NBE Bill or Part 9A of the RMA.
- 14 This would allow for further implementation flexibility in the FW-FP system. For example, larger properties could be brought into the system earlier than smaller properties. This would be by different land use thresholds being applied at different spatial scales across a region (eg to part of a region) through an OIC process.
- 15 For clarity, this discretion would not allow for FW-FPs to be required in areas smaller in size than those thresholds currently specified in the in section 217D.
- 16 To give effect to this proposal, the following changes would need to be made to the NBE Bill (Part 6, Subpart 2) and the RMA (Part 9A), ie:
- 16.1 changes to clause 401 / s 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 cl 402 / s 217D apply);
 - 16.2 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.
- 17 While the FW-FP system will begin rolling out in some regions in accordance with the current thresholds in Part 9A of the RMA, this proposal will provide discretion for flexibility in how the system rolls out later.

¹ Or where a prescribed area of the farm is in other agricultural land use prescribed in regulations made under section 217M(1)(b) of the RMA.

How this discretion will be monitored and reviewed

- 18 This discretion will be exercised through an OIC process. It is expected that the Minister for the Environment will commission additional analysis and consult the relevant regional council on whether to modify the land use area thresholds within the region.
- 19 The FW-FP regulations will be rolled out progressively across the country's regions. Any insights from the initial application of this ministerial discretion can be fed back into the implementation of FW-FPs in later regions.

Impact Analysis

Regulatory Impact Statement

- 20 An addendum to the Regulatory Impact Statement which supported previous Cabinet decisions [CAB-23-MIN-0215.02] is attached at Appendix 1. It should be read in conjunction with the substantive *Regulatory Impact Statement - Proposed Regulations for Freshwater Farm Plans* finalised on 10 May 2023
- 21 The Ministry for Primary Industries and MfE joint Regulatory Impact Analysis panel considers that the addendum fully meets the RIA requirements.

Climate Implications of Policy Assessment

- 22 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.

Consultation

- 23 The following departments were informed of this SOP: Department of Conservation, Department of Prime Minister and Cabinet, and Toitū Te Whenua/Land Information New Zealand.

Proactive Release

- 24 We will release this paper proactively, subject to redactions as appropriate under the Official Information Act 1982.

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Recommendations

The Minister for the Environment recommends that Cabinet:

- 1 **note** that the Natural and Built Environment Bill (NBE Bill) is awaiting its second reading;
- 2 **note** that the purpose of Part 9A of the Resource Management Act 1991 (RMA) 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 Freshwater Farm Plans (FW-FPs);
- 3 **note** that Part 9A does this by specifying key features of the FW-FP system, including land use area thresholds that trigger the requirement for a farm operator to obtain a certified FW-FP;
- 4 **note** that Part 9A does not apply to a region, district or part of New Zealand until activated by an Order in Council (OIC) made under section 217C of the RMA;
- 5 **note** that this enables FW-FP implementation to occur in a phased manner, with the intention that the FW-FP regulations will commence across the entirety of all 16 regions of New Zealand by the end of 2025;
- 6 **note** that Part 9A is carried forward to the NBE Bill as Part 6, Subpart 2 of that Bill;
- 7 **note** that the Parliamentary Counsel Office (PCO) is currently preparing a supplementary order paper (SOP) to make amendments to the NBE Bill at the Committee of the Whole House stage;
- 8 **note** that it would be desirable through this SOP to make a change to the FW-FP process in both the RMA (through Schedule 15 of the NBE Bill) and the NBE Bill;
- 9 **note** that this change would provide discretion to the Minister for the Environment (in consultation with the Minister of Agriculture) to apply current or modified land use area thresholds to particular land use types in making a recommendation for an OIC, where this is considered necessary to achieve the purpose of Part 9A of the RMA or Part 6, Subpart 2 of the NBE Bill;
- 10 **note** that the change could, for example, enable larger properties to be brought into the FW-FP system earlier than smaller properties;
- 11 **note** this discretion would not allow for FW-FPs to be required in areas smaller in size than those thresholds currently specified in the in section 217D.
- 12 **invite** the Minister for the Environment to issue drafting instructions to PCO to make the following changes to the NBE Bill (Part 6, Subpart 2) and the RMA (Part 9A):
 - 12.1 changes to clause 401 / s 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 cl 402 / s 217D apply);
 - 12.2 changes to clause 401 / section 217C and clause 402 / section 217D to enable the Minister to set additional or different thresholds for a region, district or part of New Zealand when recommending an OIC;

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- 13 **agree** that the Minister for the Environment confirms this drafting directly with Cabinet on 24 July;
- 14 **authorise** the Minister for the Environment to implement other minor and technical changes required by PCO for drafting purposes;
- 15 **note** that it is intended to publish this Cabinet paper on the Ministry for the Environment's website following the release of the SOP.

Authorised for lodgement

Hon Damien O'Connor
Minister of Agriculture

Hon David Parker
Minister for the Environment

Appendices

**Regulatory Impact Statement Addendum: Application of the Resource Management
(Freshwater Farm Plan) Regulations 2023**

Regulatory Impact Statement Addendum: Application of the Resource Management (Freshwater Farm Plan) Regulations 2023

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing a Supplementary Order Paper to Part 9A of the Resource Management Act 1991 and the Natural and Built Environment Bill</i>
Advising agencies:	<i>Ministry for the Environment, Ministry for Primary Industries</i>
Proposing Ministers:	<i>Minister for the Environment, Minister of Agriculture</i>
Date finalised:	<i>7/07/2023</i>
Executive Summary	
1.	On 1 July 2020 Parliament inserted a new Part 9A into the Resource Management Act 1991 (RMA) to provide the legislative basis for the introduction of the Resource Management (Freshwater Farm Plan) Regulations 2023 ('the FW-FP regulations').
2.	The key purpose of Part 9A 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 (FW-FPs). It does this by specifying key features of the freshwater farm planning system, including the land use thresholds that trigger the requirement for a farm operator to obtain a certified FW-FP.
3.	The FW-FP regulations, which commence on 1 August 2023, provide further direction on the intended operation of the freshwater farm planning system including the roles and responsibilities of key system participants (e.g., national and regional government, tangata whenua, farm operators, certifiers and auditors), required farm plan content, and the required process for identifying and assessing risks to freshwater and selecting appropriate actions to manage those risks.
4.	Minister O'Connor and Minister Parker are seeking amendments to Part 9A of the RMA and the corresponding part of the Natural and Built Environment Bill (NBEB) to provide increased FW-FP implementation flexibility.
5.	This Addendum considers options for providing increased implementation flexibility. It should be read in conjunction with the substantive <i>Regulatory Impact Statement - Proposed Regulations for Freshwater Farm Plans</i> finalised on 10 May 2023 and available at: https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/proposed-regulations-freshwater-farm-plans/ .
Responsible Managers	
<i>Gin Loughnan Manager – Agriculture, Policy Implementation & Delivery Ministry for the Environment</i>	<i>Olivia Sullivan Acting Director – Natural Resources Policy Directorate Ministry for Primary Industries</i>



July 2023



July 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for the Environment, Ministry for Primary Industries
Panel Assessment & Comment:	<p>A joint Ministry for Primary Industries and the Ministry for the Environment Regulatory Impact Analysis Panel reviewed the <i>Regulatory Impact Statement Addendum: Application of the Resource Management (Freshwater Farm Plan) Regulations 2023</i> as an addendum to the <i>Regulatory Impact Statement: Proposed Regulations for Freshwater Farm Plans (May 2023)</i> which was prepared by both agencies.</p> <p>The panel considered that the <i>Regulatory Impact Statement Addendum: Application of the Resource Management (Freshwater Farm Plan) Regulations 2023</i>. The RIA panel considers that the addendum fully meets the RIA requirements.”</p>

Section 1: Background

6. Mandatory and enforceable Freshwater Farm Plans (FW-FPs) are a key *Essential Freshwater* initiative designed to improve farm practice and support regional councils to carry out their freshwater management responsibilities under the National Policy Statement for Freshwater Management 2020 (NPS-FW).
7. On 1 July 2020 Parliament inserted a new Part 9A *Freshwater Farm Plans*, into the Resource Management Act 1991 (RMA) which specified the key features of the freshwater farm planning system and provided for the development of regulations (under section 217M of the RMA) to:
 - set out obligations for the preparation, certification, audit and enforcement of FW-FPs;
 - outline the process and management practice requirements to support farm operators, certifiers and auditors to perform their duties.
8. Although Part 9A of the RMA came into force on 1 July 2020, it does not apply to a region, district or part of New Zealand until activated by an Order in Council made under section 217C of the RMA. This approach enables FW-FP implementation to occur in a phased manner, allowing sufficient time for the development of the FW-FP certifier and auditor workforce and other supporting implementation mechanisms. The intention is that the FW-FP regulations will commence across the entirety of all 16 regions of New Zealand by the end of 2025.
9. In July 2021, the Ministry for the Environment (MfE) and the Ministry for Primary Industries (MPI) published a discussion document presenting options for the detailed design of the FW-FP system, to be promulgated in regulations. An initial Regulatory

Impact Statement (RIS) analysing the options was published on the MfE website in July 2022.

10. In January 2023 an exposure draft of the Freshwater Farm Plan Regulations was released for targeted consultation with key stakeholders to assess whether:
 - the draft regulations were fit-for-purpose, and
 - the roles and responsibilities of key system participants were well understood.
11. Consultation on the draft regulations closed in February 2023 and 37 submissions were received. A summary of the submissions was developed which informed the development of a small suite of technical refinements to the draft regulations which were approved by Cabinet on 1 July 2023 (LEG 23-MIN-0081 refers). Cabinet also agreed at this time that the regulations should be submitted to the Executive Council for commencement on 1 August 2023 and, to commence the regulations in the Southland and Waikato regions from this date. The initial RIS was also updated to include analysis of the policy refinements.
12. Minister O'Connor and Minister Parker are seeking to introduce a Supplementary Order Paper (SOP) on the Natural and Built Environment Bill (NBEB) at the Committee of the whole house stage to incorporate amendments to provide increased FW-FP implementation flexibility in how land use thresholds are applied (so that FW-FP requirements can be further tailored to meet the circumstances of each region).

Section 2: What is the policy problem or opportunity?

What objectives are sought in relation to the policy problem?

13. In line with the substantive July 2022 RIS, the objectives underpinning the analysis in this addendum are to:
 - stop further degradation and reverse past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems;
 - provide confidence that consistent freshwater outcomes are achieved; and
 - provide enough flexibility to reflect individual farm circumstances.
14. Part 9A of the RMA achieves this by specifying which farms must have certified FW-FPs, required minimum FW-FP content, the relationship between certified FW-FPs and specified instruments, and the compliance functions of regional councils. In particular, section 217D of the RMA provides that a farm must have a certified FW-FP if:
 - 20 or more hectares of the farm is arable land use; or
 - 5 or more hectares of the farm is horticultural land use; or
 - 20 or more hectares of the farm is pastoral land used
 - A prescribed area of the farm is other agricultural land use prescribed in regulations made under section 217M(1)(b) of the RMA; or
 - 20 or more hectares of the farm is a combination of any 2 or more of the land uses described above.
15. These land use thresholds were set and consulted on in 2020 as part of the Government's *Essential Freshwater* programme. The thresholds were set to better control the adverse effects of farming on freshwater and freshwater ecosystems, noting that even small farming operations can have potentially adverse cumulative effects

depending on the type of ground they are operating on and the state of the local freshwater environment.

16. The Resource Management (Freshwater Farm Plan) Regulations 2023, which commence on 1 August 2023, also specify how key aspects of the FW-FP regulatory system are intended to operate. These components are summarised in Table 1.

Table 1: Components of the FW-FP regulations

Outcomes	To specify the outcomes that must be achieved for the purpose of avoiding, remedying, or mitigating the adverse effects of farming activities on freshwater and freshwater ecosystems
Risk assessment	Process for identifying and assessing the adverse effects of farming activities on freshwater and freshwater ecosystems
Actions to avoid, remedy, or mitigate adverse effects	Process for selecting actions to avoid, remedy, or mitigate the adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems
Recertification timeframes	Prescribing timeframes for when a FW-FP must be recertified, and prescribing the circumstances in which a certified FW-FP must be amended and recertified
Audit timeframes	Prescribing the frequency of audits

Problem definition

17. The current land use thresholds (which set where a FW-FP is required) are fixed in the RMA and don't allow for different land use thresholds to be considered in where and in what order FW-FPs roll out in regions. While this is likely to be appropriate in most circumstances there may specific regional or catchment situations where it may be appropriate to also be able to vary roll-out via size
18. The government also considers that the current land use thresholds specified in section 217D of the RMA have the potential to capture small and/or low intensity farms. This could result in some farm operators incurring additional costs (associated with the development, certification and audit of their FW-FPs) for limited freshwater improvement gains.
19. Joint officials have previously advised that the current approach for rolling-out the FW-FP system (i.e. utilising an Order-in-Council (OIC) process which allows for intra-regional commencement phasing) provides appropriate flexibility, especially as it would be accompanied by extensive performance monitoring and associated reporting to responsible ministers. Joint officials also noted that introducing a discretionary power to amend the thresholds might create uncertainty regarding the application of the regulations.
20. Ministers remained concerned regarding the level of flexibility that would be provided in practice and subsequently directed joint officials to examine the thresholds for when FW-FPs are required. Joint officials consider that the preferred option identified in this analysis provides the most effective means of operationalising this direction.

Section 3: Options identification and analysis

What criteria will be used to compare options to the status quo?

21. To maintain analytical consistency this RIS utilises the assessment criteria contained in the substantive July 2022 RIS as outlined in Table 2.

Table 2: Assessment criteria

Effective	not contrary to Te Mana o te Wai; identifies and avoids, remedies, or mitigates adverse effects; supports existing legislative requirements, the requirements of regional councils and catchment management objectives
Practical	minimises administration and compliance costs; feasible to implement; verifiable, auditable, and enforceable
Credible	methods are scientifically and culturally robust and adaptable; trusted by all stakeholders and partners
Integrated	supports broader Government, iwi, and industry initiatives; supports a competitive New Zealand agricultural sector; supports wider Government and sector objectives; consistent with Treaty of Waitangi obligations
Equitable	will provide affected parties time to transition; recognise past actions; equitable distributional impacts; cognisant of the wellbeing of rural communities and people

Options being considered

22. Two options have been identified:

Option One – Provide ministerial discretion to modify the existing land use thresholds and apply them to different land use types at different spatial scales across each region

23. Under this option the Minister for the Environment, in consultation with the Minister of Agriculture, would have the discretion to modify the current land use thresholds and apply them to particular land use types where this is considered necessary to achieve the purpose of Part 9A of the RMA. Land use types would be constrained to those already defined in section 217D of Part 9A of the RMA.
24. This option could allow for further implementation flexibility in relation to how land use thresholds are applied. It will enable different land use thresholds to be applied at different spatial scales (e.g., district or sub-part) across a region using the Order in Council process – in practice this may mean that there are different thresholds for when a FW-FP is required in different regions or catchments.

Option Two – Increase the current land use thresholds contained in Part 9A of the RMA that trigger certified FW-FP requirements

25. Under this option the thresholds would be increased to a specified level to reduce the number of small-scale farming operations that are subject to FW-FP requirements.

How do the options compare to the status quo/counterfactual?

	Status quo – retain thresholds currently set out in Part 9A RMA	Option One – provide ministerial discretion to modify the thresholds currently set out in Part 9A RMA	Option Two – increase the thresholds currently set out in Part 9A RMA
Effective	<p>0</p> <p>Captures approximately 34,000 farms across New Zealand. Helps to address the cumulative effects of farming activities on freshwater for catchments with mostly small farms and is likely to be consistent with Te Mana o te Wai.</p>	<p>-</p> <p>Likely to capture fewer farms. Small farms with high-risk farming activities are still likely to require a FW-FP. Although may not address cumulative effects for catchments with mostly small, low intensity farms. Could be executed in a manner consistent with Te Mana o te Wai.</p>	<p>--</p> <p>Captures fewer farms. Small farms with high-risk farming activities will not require a FW-FP. Does not address cumulative effects for catchments with mostly small farms and has the potential to be inconsistent with Te Mana o te Wai.</p>
Practical	<p>0</p> <p>Some challenges with implementation given the required certifier and auditor workforce and the limited capacity of some regional councils. Farm operators for small and/or low intensity farms may incur additional costs for potentially limited freshwater improvement gains.</p>	<p>+</p> <p>Likely to reduce pressure on the certifier and auditor workforce and regional council capacity, enabling resources to be targeted at farms that pose the most significant risk to freshwater and freshwater ecosystems. Farm operators for small and/or low intensity farms are less likely to incur additional costs. Phasing for rollout in future regions may be delayed as the additional flexibility is considered.</p>	<p>+</p> <p>Most likely to reduce pressure on the certifier and auditor workforce and regional council capacity. Farm operators for small and/or low intensity farms are also least likely to incur additional costs with this option. The current rollout plan for phase 1 regions would likely need to be paused while this change was made and then rollout reconsidered.</p>
Credible	<p>0</p> <p>Provides up front certainty and consistency to when and where a FW-FP is required, and more certainty for rollout and implementation planning. Although not adaptable to differences in risks to freshwater of different land uses.</p>	<p>+</p> <p>Provides additional flexibility and tailoring of the regulations by land use threshold. May create some uncertainty and inconsistency in how the additional flexibility will be applied in future regions.</p>	<p>-</p> <p>Provides certainty and consistency to when and where a FW-FP is required, although less certainty for rollout and implementation planning. Not adaptable to differences in risks to freshwater of different land uses.</p>

<p>Integrated</p>	<p>0</p> <p>FW-FPs should achieve consistent freshwater outcomes. Although no flexibility for regional councils and tangata whenua to participate in threshold setting.</p>	<p>+</p> <p>Supports regional councils and tangata whenua to participate in threshold setting – is more consistent with the Crown’s treaty of Waitangi obligations. There is a risk FW-FPs will not achieve consistent freshwater outcomes if discretion to modify the land use thresholds is not managed carefully.</p>	<p>--</p> <p>No flexibility for regional councils and tangata whenua to participate in threshold setting. There is potential FW-FPs will not achieve consistent freshwater outcomes.</p>
<p>Equitable</p>	<p>0</p> <p>Consistent thresholds across New Zealand will make FW-FP implementation straightforward. Small and/or low risk farms are less likely to have an existing farm environment plan, so it may be more difficult for these operators to transition to the FW-FP system.</p>	<p>0</p> <p>Flexibility will help ensure distributional impacts are equitable. Although there is a risk of actual and/or perceived inequity given there could be different land use thresholds in different regions, and in different catchments within the same region. Moreover, Phase 1 regions will not experience commensurate levels of implementation flexibility to later regions. Uncertainty and delays in rollout for future regions may give farmers and councils less time to prepare.</p>	<p>-</p> <p>FW-FP implementation will be relatively straightforward given thresholds are consistent across New Zealand. Although delays in rollout for phase 1 regions may give farmers and implementors less time to prepare. A lack of flexibility may mean distributional impacts are not equitable.</p>
<p>Overall assessment</p>	<p>0</p> <p>The status quo provides system participants with certainty and should achieve consistent freshwater outcomes. Although it does not provide the implementation flexibility being sought.</p>	<p>+</p> <p>Option One provides flexibility to tailor land use thresholds which will help to ensure small and/or low risk farms do not incur additional costs for potentially limited freshwater improvement gains. This option introduces some uncertainty for implementation in future regions which will need to be carefully managed.</p> <p><i>Recommended option</i></p>	<p>--</p> <p>Option Two provides certainty and reduces costs for small and/or low risk farms. Although there is potential FW-FPs will not achieve consistent freshwater outcomes, less certainty for rollout and implementation planning, and rollout of FW-FPs in phase 1 regions would likely be delayed.</p>

Key for qualitative judgements:

- ++** much better than doing nothing/the status quo/counterfactual
- +** better than doing nothing/the status quo/counterfactual
- 0** about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

26. **Option One (providing ministerial discretion to modify existing land use thresholds and apply them to different land use types and at different spatial scales across each region)** aligns most effectively with the assessment criteria outlined in this addendum because it:

- Could be executed in a manner consistent with Te Mana o te Wai and supports regional councils in undertaking their legislative responsibilities;
- Minimises administration and compliance costs and is feasible to implement;
- Methods for modifying the land use thresholds will be scientifically and culturally robust and adaptable, and can be trusted by all stakeholders and partners;
- Supports broader Government, tangata whenua and industry freshwater quality improvement initiatives; and
- Provides flexibility, helping to ensure the distributional impacts associated with FW-FP implementation are equitable.

What are the marginal costs and benefits of Option One?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (farm operators, certifiers and auditors)	No direct or indirect costs have been identified	Low	High
Regional councils	Costs associated with the collation and production of data necessary to inform ministerial decision-making	Low	High
Government	Costs associated with operational decision-making, specifically identifying appropriate FW-FP land use thresholds in each region, district or sub-part and preparing the associated Orders in Council	Low	High
Total monetised costs	Direct monetised costs apply to regional councils and government in determining	Low to medium depending on the number of districts or sub-parts	High

	appropriate FW-FP land use thresholds	each region is broken into for FW-FP implementation purposes	
Non-monetised costs	None identified	Low	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups (farm operators, certifiers and auditors)	Will reduce the total number of FW-FPs required enabling resources to be targeted at farms that pose the most significant risk to freshwater and freshwater ecosystems	Medium	Medium
Regional councils	Regional councils may experience fewer capacity challenges given there will be less FW-FPs and the required certifier and auditor workforce will be smaller	Low	Medium
Government			
Total monetised benefits	The direct benefits to regulated groups, regional councils and government have not been monetised	This cell is intentionally blank	This cell is intentionally blank
Non-monetised benefits	Non-monetised benefits are likely to accrue to all FW-FP system participants since a more targeted approach to FW-FP implementation is likely to accelerate the delivery of improved freshwater outcomes at reduced cost	Medium	Medium

Section 4: Implementation and evaluation

How will the new arrangements be implemented?

27. Option One requires changes to Part 9A of the RMA and the NBEB. These changes will be introduced by SOP at the Committee of the whole house stage on the NBEB.
28. To give effect to Option One the following changes need to be made to Part 9A of the RMA and the corresponding parts of the NBEB:
 - Changes to sections 217D and 217M to enable the Minister for the Environment to set additional or different thresholds for all or parts of New Zealand
 - Supporting changes to section 217C to enable Orders in Council to apply Part 9A to a region but only affect some of the farms (i.e., specify one or more thresholds in section 217D to apply).

29. Option One will not be initially available to the first parts of Southland and Waikato (where the regulations will have already commenced in accordance with the current thresholds in Part 9A of the RMA).
30. To manage the risk of regulatory uncertainty, it is expected that the responsible Minister will commission further impact analysis and consult with the relevant regional council when determining whether to set additional or different land use thresholds.
31. The exercise of ministerial discretion will not be subject to appeal since the Minister is required to make a formal recommendation to the Governor-General that an Order-in-Council be made. This provides an appropriate procedural safeguard.

Consultation on this proposal

32. The intention is to implement this proposal by tabling a Supplementary Order Paper when the Natural and Built Environment Bill is considered by the Committee of the Whole House. This approach has posed significant time constraints. Consequently, there has not been sufficient time to initiate formal consultation on this proposal. The timeframes for preparing this analysis have also been compacted.
33. The Ministry for the Environment has ensured that key stakeholders have been updated on developments. Joint officials have also noted that the importance of preserving FW-FP implementation was a key issue that stakeholders raised during the July 2021 public discussion document consultation process, and during the January 2023 targeted consultation on the draft regulations.
34. Joint officials consider that, while this analysis has been impacted by timing constraints, this has not materially impacted its quality.

How will the new arrangements be monitored, evaluated, and reviewed?

35. The Ministry for the Environment will monitor the performance of the FW-FP system, including any impacts (positive or negative) the added ministerial discretion to modify current land use thresholds has on system performance.
36. As the FW-FP regulations will gradually commence across New Zealand, and within different regions, any insights from the initial application of this ministerial discretion can be feedback into the implementation of FW-FPs in future regions.
37. This option will be activated through an Order in Council process. It is expected that the Minister for the Environment will commission additional cost-benefit analysis and consult the relevant regional council when deciding whether to modify the land use thresholds for a region.

Potential implementation risks

38. As part of this analysis Officials have considered the following potential implementation risks with the preferred option identified above:

Risk description	Mitigation
The discretionary power to modify land use thresholds is exercised inconsistently resulting in policy fragmentation	The responsible minister could commission additional cost/benefit analysis and consult the relevant regional council when deciding whether to modify the land use thresholds specified in section 217D of the RMA
The Phase 1 regions commencing FW-FP implementation on 1 August 2023 (i.e., Southland and Waikato) will not experience commensurate levels of implementation flexibility to those commencing rollout from 2024 onwards	The FW-FP regulations commence via Order in Council which provides flexibility to update the implementation arrangements for the Phase 1 regions where there are compelling policy or logistical reasons to do so