

**In-Confidence**

Office of the Minister for the Environment

Office of the Minister of Agriculture

**Cabinet Economic Development Committee**

**Public consultation on discussion documents: Freshwater Farm Plan Regulations, and Stock Exclusion Regulations – proposed changes to the low slope map**

**Proposal**

- 1 We seek approval to publicly consult on:
  - 1.1 a discussion document titled, *Freshwater Farm Plan Regulations* (Appendix 1). The discussion document presents options for freshwater farm plan regulations under Part 9A of the Resource Management Act 1991 (RMA), and
  - 1.2 a discussion document titled, *Stock Exclusion Regulations: proposed changes to the low-slope map* (Appendix 2). This document proposes changes to the map of low slope land referred to in the Resource Management (Stock Exclusion) Regulations 2020.
- 2 We propose undertaking consultation on these two matters in one aligned consultation package. To the extent possible, officials will align this consultation with the changes to permitted activity standards in the intensive winter grazing provisions of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F), which is intended to run from mid-August into September 2021.

**Relation to government priorities**

- 3 The Government's recent *Essential Freshwater* reforms added Part 9A to the RMA in 2020. This requires all arable, horticultural and pastoral farms above specified thresholds to have a certified Freshwater Farm Plan (FW-FP).
- 4 FW-FPs are a new regulatory tool which will better control the adverse effects of farming activities on freshwater ecosystems. FW-FPs will be mandatory and enforceable.
- 5 The FW-FP system is one part of the regulatory system for freshwater management which also includes:
  - 5.1 The National Policy Statement for Freshwater Management 2020 (NPS-FM). Under the NPS-FM regional councils have responsibilities to set attribute targets and plan the actions, including setting resource limits, to meet these targets through their regional plans. Regional councils are also required to give

effect to Te Mana o te Wai and to improve, or at the very least maintain, the current state of waterways. Regional councils must notify freshwater plans that give effect to the NPS-FM by December 2024.

- 5.2 The NES-F which includes regulation of some farming practices and protection of wetlands.
- 5.3 Regulations under section 360 of the RMA to exclude stock from water bodies in certain circumstances. Some stock exclusion will be managed through the FW-FP risk/impact assessment process.
- 6 While many regional plans contain specific rules regarding farming activities, applying a wide range of prescriptive rules under the NES-F and/or regional plans is not always suitable for many farming activities where practices vary based on an individual farm or catchment's circumstances. FW-FP regulations provide an additional management tool, enabling farmers and their advisors to develop solutions to improve freshwater outcomes that are tailored to each farm and its local circumstances.
- 7 FW-FPs will be modules of the broader Integrated Farm Planning Programme [CAB-21-MIN-0162]. Other modules under Integrated Farm Planning will address greenhouse gas emissions, biodiversity, people management, animal welfare and intensive winter grazing (incorporated into freshwater farm plans).

### **Background to Freshwater Farm Plan system proposals**

- 8 The purpose of freshwater farm plans under the RMA [Part 9A] is to better control the adverse effects of farming on freshwater and freshwater ecosystems.
- 9 Part 9A of the RMA provides that:
  - 9.1 FW-FP are mandatory for all farms over a certain size threshold,
  - 9.2 FW-FPs must be certified and audited, and
  - 9.3 regional councils are responsible for the compliance, monitoring and enforcement of FW-FPs.
- 10 The objective is for FW-FPs to identify solutions to improve waterways that are tailored to a particular farm's circumstances including its physical environment and the catchment that farm sits in.
- 11 FW-FP regulations are planned to come into effect from the first half of 2022.

### **Approach to option development for Freshwater Farm Plan system**

- 12 The Ministry for the Environment (MfE) and the Ministry for Primary Industries (MPI) held workshops with technical experts in farm systems, regional sector representatives, and iwi/Māori, in November and December 2020 to gather information about existing farm planning council rules and primary sector Industry Assurance Programmes.

- 13 Using the information from these workshops MfE and MPI, alongside regional councils, developed options for the key components of the FW-FP system proposed in the discussion document.
- 14 The *Freshwater Farm Plan Regulations* discussion document outlines options on the FW-FP regulations for the purpose of seeking public feedback (see Appendix 1). Initial regulatory impact analysis of the proposed options is also included (see Appendix 3).
- 15 The discussion document has been prepared with input from the Freshwater Implementation Group (FIG)<sup>1</sup>, farm plan practitioners and iwi/Māori. We are also seeking approval to make minor editorial, design and technical changes to the discussion document prior to its release.

### Key Design Elements of Freshwater Farm Plan system

- 16 The key design components of FW-FPs set out in the discussion document include:
  - 16.1 **Regulated outcomes:** the regulations will contain specific outcomes that must be achieved for the purpose of avoiding, remedying, or mitigating any adverse effects from farming activities on freshwater and freshwater ecosystems. Each FW-FP must demonstrate that it can achieve these regulated outcomes.
  - 16.2 **Mandatory elements that must be included in FW-FPs:** including requirements for base information, a risk/impact assessment and actions to avoid, remedy or mitigate harm to waterways.
  - 16.3 **Certification and audit:** Part 9A of the RMA requires the use of certifiers and auditors in FW-FPs and enables regulations to prescribe particular requirements for certifiers and auditors.
  - 16.4 **Implementation:** certified FW-FPs will not be required across the country all at once. Prioritisation and phasing options are outlined in the discussion document to give time for primary and regional sector capacity and capability to grow.
- 17 The FW-FP regulations are being designed to build from the considerable work already occurring through farm environment planning. There will be a process for aligning existing farm planning initiatives such as industry assurance programmes to deliver FW-FPs and avoid duplicating effort.

### Approach to making the Regulations for Freshwater Farm Plan system

- 18 The FW-FP regulations set a new range of freshwater management outcomes and practice requirements.
- 19 An adaptive design approach has been adopted – one that recognises that varying degrees of prescription will be required depending on whether a particular issue is

<sup>1</sup> FIG consists of Chief Executives (or other senior personnel) from primary and regional sectors, environmental NGOs, NZ Fish and Game council, central and local government, and members of Kāhui Wai Māori (the Māori Freshwater Forum), see the following link for more details on membership: <https://environment.govt.nz/what-government-is-doing/areas-of-work/freshwater/e/advisory-groups-for-the-essential-freshwater-programme/freshwater-implementation-group/>

most effectively addressed through setting clear goals or the introduction of explicit management standards.

- 20 Where flexibility is preferred for certain system design elements, to manage the risk that there is less certainty than from a more prescriptive regime, the FW-FP outcomes will be accompanied by clear guidance to support decision-making, robust quality assurance processes, and a reasonable degree of transparency. This guidance will not be enforceable – but is designed to help people understand and operate successfully in the FW-FP system.

### **Background to proposed changes to low slope map**

- 21 Requiring stock to be excluded from waterways is a key mitigation to reduce contaminants, in particular sediment and bacteria, in waterways.
- 22 The low slope map for stock exclusion regulations (the current map) sets minimum requirements for beef cattle and deer to be excluded from waterways.
- 23 The approach used in the current map to average slope across land parcels in a certificate of title had captured too much high slope land, on which it would be very impractical, costly, or ineffective to exclude stock from waterways. In addition, this approach excluded too much low slope land which we do want fenced.
- 24 MfE and MPI worked with key regional and primary sector stakeholders to investigate issues with the current map. A key theme from stakeholders was that it was desirable for stock exclusion requirements to have some flexibility.

### **Process for developing changes to low slope map**

- 25 In response to concerns raised about the current map, we directed officials to test alternative mapping approaches, to see if there is a better way to map low slope land. Officials have identified a more effective mapping approach that could be applied. This includes using FW-FPs to manage stock exclusion requirements in areas with an average slope between 5-10 degrees.

### **Consultation on proposed changes to low slope map**

- 26 The proposed changes, as set out in material for consultation (in Appendix 2), are:
- 26.1 Introducing a mapping methodology for local terrain averaging, which more accurately and consistently identifies areas of low slope;
  - 26.2 Introducing a 500m altitude threshold and removing depleted grassland and tall tussock in order to avoid capturing high country stations with low stocking rates;
  - 26.3 Managing land with a slope threshold from 10 degrees to 5 degrees through FW-FPs using a risk-based approach, which greatly reduces the risk of the revised low slope map capturing steeper land;

26.4 Noting that through the FW-FP process, any land deemed by a certifier to require stock exclusion, whether in the map or not, will need to be managed through a FW-FP.

We are also seeking approval to make minor editorial, design and technical changes to the consultation material prior to its release.

- 27 The changes proposed by the consultation material are designed to balance the benefits of a national mandatory requirement for stock exclusion with the need for flexibility to respond to New Zealand's complex landscapes and farming systems. The combined effect of the changes outlined above is to reduce the estimated proportion of land greater than 10 degrees in slope captured in the map from 11.5 per cent (current) to just 0.07 percent (revised map).
- 28 If this level of land capture is still considered too high, it would be possible to consult on the revised map and make final 'manual' adjustments to the map based on feedback from farmers. We are looking for suggestions on how best to manage stock exclusion in the high country given the complexities involved.
- 29 In this way Cabinet's intent in agreeing to a 10 degree slope threshold can be achieved, through a more flexible approach than the regulations currently allow.
- 30 The revised map would be complemented by FW-FP guidance, and there is an efficiency to consulting jointly on these changes and FW-FPs. It will enable discussion of the balance, in terms of stock exclusion requirements, between national direction through regulations and tailored on-farm solution through FW-FPs. We have asked officials to test the proposed mapping approach with key regional and primary sector stakeholders in advance of wider consultation.

### Financial Implications

- 31 Financial implications will be considered when Cabinet is asked to take decisions on a final FW-FP system, and on a final slope map for stock exclusion regulations.
- 32 The on-going costs of developing FW-FPs and having them certified and audited will largely be borne by farmers. Some existing Jobs for Nature funding could be used to help develop employment and capability in support of FW-FPs (such as training of certifiers).
- 33 The initial freshwater farm plan development and certification process could cost between \$1,500 to \$10,000 per farm operation. Audit and recertification costs could range between \$2,000 and \$3,500. Therefore, a typical cost would be around \$5,000 to \$8,000 (estimated with moderate confidence).
- 34 The costs and benefits of excluding stock from waterways were assessed during the development of the Essential Freshwater regulations. The consultation material includes questions to elicit information on the cost implications of the proposed changes to the low slope map.

## Legislative Implications

### Legislative implications relating to the Freshwater Farm Plan proposals

- 35 Regulatory changes will be required to implement the Freshwater Farm Plan proposals. New regulations are proposed under Part 9A of the RMA, (Part 9A prescribes what can be included in the regulations). s 9(2)(h)

### Legislative implications relating to the proposed changes to the stock exclusion low-slope map

- 36 As the proposed stock exclusion changes are just to the map, which is material incorporated by reference, limited if any regulatory changes will be needed. This will require the Minister for the Environment to publish in the Gazette that there has been an amendment to the material incorporated by reference, under Schedule 1AA, 2(2) of the RMA.

## Treaty of Waitangi (Te Tiriti o Waitangi) Implications

- 37 To take into account the Treaty of Waitangi (Te Tiriti o Waitangi), the FW-FP system is designed to align with the Te Mana o te Wai concept, introduced in *Essential Freshwater*.
- 38 Te Mana o te Wai sets out principles for freshwater including mana whakahaere, kaitiakitanga and manaakitanga alongside a hierarchy which sets the health of the waterway as the priority above other uses. The FW-FP Project team has worked with the Kāhui Wai Māori as a baseline for Māori engagement to date.
- 39 In addition, we engaged with several iwi environmental managers and Māori technicians during the drafting phase of the discussion document to flesh out the high-level challenges and opportunities for tangata whenua within the FW-FP regime. Further pre-consultation engagement with tangata whenua will occur later this month, including on changes to the slope map for stock exclusion regulations. This will occur during the proposed consultation period.
- 40 We are conscious that tangata whenua are under considerable pressure now, needing to engage with the Crown on a number of key issues, including Resource Management reform. Consultation will be designed to allow tangata whenua input into FW-FP regulations and changes to the slope map for stock exclusion regulations to be co-ordinated with the other consultation exercises referred to in paragraph 2.

## Impact Analysis

### Regulatory Impact Statement

- 41 A RIS was prepared for the enabling legislation for FW-FPs in Part 9A of the RMA under the *Essential Freshwater* package. For the proposed regulations to support the FW-FP system, an interim Regulatory Impact Assessment (RIA) has been prepared to assess the different options. This interim RIA will be published alongside the discussion document and will be finalised after feedback from consultation.

- 42 The MfE/MPI RIA Panel has reviewed the interim RIA for freshwater farm plan regulations and considers that it **meets** the Quality Assurance criteria for this stage of the process and is likely to facilitate effective consultation on the proposals. The consultation will provide information on the likely impacts of the proposals, to inform a RIA on the final proposals.
- 43 The discussion document *Stock Exclusion Regulations: Proposed changes to the low-slope map* serves as an interim RIA for proposed changes to the current low slope map. MfE and MPI have reviewed the discussion document and have confirmed that it **meets** requirements and is likely to lead to effective consultation and support the delivery of a final RIA to support subsequent decisions.

### Population Implications

- 44 **Farmers and Growers** – Approximately 40,000 farmers and growers, who meet the size threshold, will be required to have a certified and audited freshwater farm plan over time. This will have costs associated with it for both the development of the plan as well as implementing the mitigations needed to reduce the identified risks. However, the freshwater farm plan system will provide a more flexible, effective approach giving farmers confidence that the actions they are taking on farm are having material positive impacts on freshwater ecosystems.
- 45 **Regional Councils** – Regional councils will hold the compliance, monitoring and enforcement function of this system through the RMA. They will also be responsible for providing information on catchment context and appointing certifiers and auditors in their region.
- 46 **Wider Community** – Implementing freshwater farm plans will involve the wider community, including rural communities. Farmers and growers can develop a plan themselves, with the help of a trusted advisor, catchment group peers, technical experts, or any combination of the above. The FW-FP system will also be supported by a network of advisory services including farm planners, systems experts, certifiers, auditors, and those involved in implementing mitigations on farm. In time this will create primary sector opportunities through jobs, services and administration.

### Consultation

- 47 We propose consultation opens on 26 July 2021 and runs for a period of seven weeks. As well as written feedback, MfE and MPI will host a series of targeted meetings with the farming community, councils, tangata whenua and environmental NGOs. To help gain reach to broader affected and interested parties, agencies could also run a series of managed online webinars. Experience with *Essential Freshwater* consultation in 2019 showed a high degree of farmer interest in these issues.
- 48 Our offices will develop a joint communications and engagement plan with input from officials, including media statements, questions and answers and protocols for handling any media enquiries.
- 49 ENGOs consulted during the drafting of the FW-FP discussion document were concerned there was a lack of clarity about the relationship between FW-FPs and regional plans and rules. They requested consultation be delayed to allow this to be

considered in more detail. We note the concern but consider it can be addressed through supporting the release with a communications package.

- 50 We propose consultation on FW-FPs includes consultation on changes to the low slope map. Material for consultation will feature a revised map reflecting the proposed changes, accompanied by explanatory information including statistics on the differences from the current map.

### Risks

- 51 The risks related to releasing the Freshwater Farm Plan Regulations discussion document include: negative reaction from key stakeholders and the media; frustration from farmers that consultation will take place during calving/lambing, and public consultation being run close in time to the proposed upcoming resource management reform select committee exposure draft, and shortly after the planned release of the Overseer Peer Review Report and the Government's Response.
- 52 The mitigations to these risks include a strategic engagement plan developed by officials to provide clear, concise and assessable information in a variety of formats (for example online webinars, online FAQ, and in-person hui). Where possible, officials will seek to align related engagements.
- 53 Risks are similar for consultation on proposed changes to the low slope map. A further risk is that primary sector stakeholders seek to revisit issues about stock exclusion that are unrelated to the map. A mitigation for this risk is that combining consultation with FW-FPs enables a holistic discussion about how stock exclusion requirements will apply.

### Proactive Release

- 54 We propose to proactively release this paper on MfE's website, subject to redactions as appropriate to those under the Official Information Act 1982, once consultation has begun.

### Recommendations

- 55 We recommend that you:
1. **Approve** the release of the discussion document attached to this paper for public consultation on freshwater farm plan regulations;
  2. **Approve** the release of the discussion document attached to this paper for consultation on proposed changes to the low slope map for the Resource Management (Stock Exclusion) Regulations 2020;
  3. **Agree** that the offices of the Minister for the Environment and Minister of Agriculture will develop a joint communications and engagement plan with input from officials, including media statements, questions and answers and protocols for handling any media enquiries;
  4. **Agree** that public consultation will take place for 7 weeks from 26 July and ending on 12 September;

5. **Agree** to delegate authority to the Minister for the Environment and Minister of Agriculture to make minor textual, editorial, design and technical changes to the Freshwater Farm Plan discussion document before consultation (in consultation with other Ministers, as appropriate);
6. **Agree** to delegate authority to the Minister for the Environment and Minister of Agriculture to make minor textual, editorial, design and technical changes to the Stock Exclusion low slope map discussion document before consultation (in consultation with other Ministers, as appropriate);
7. **Invite** the Minister for the Environment and Minister of Agriculture to report back to Cabinet to recommend final policy decisions on freshwater farm plans ahead of their implementation in the first half of 2022;
8. **Invite** the Minister for the Environment and Minister of Agriculture to report back to Cabinet to recommend final decisions on changes to the low slope map for stock exclusion regulations after consultation concludes.

Authorised for lodgement

Hon David Parker

**Minister for the Environment**

Hon Damien O'Connor

**Minister of Agriculture**

**Appendices**

**Appendix 1 – Freshwater Farm Plan Regulations Discussion Document**

Proactively released under the provisions of the Official Information Act 1982

Appendix 2 – Stock Exclusion low slope map Discussion Document

Proactively released under the provisions of the Official Information Act 1982

**Appendix 3 – Freshwater Farm Plan Regulations supporting material: initial regulatory impact analysis of the proposed options**

Proactively released under the provisions of the Official Information Act 1982