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Submission on the Freshwater Farm Plan regulations discussion document

The New Zealand Association for Impact Assessment (NZAIA) thanks the Ministry for the Environment for the opportunity to submit on the Discussion Document.

About the New Zealand Association for Impact Assessment (NZAIA)

The NZAIA is an incorporated society and registered charity, comprising a community of impact assessment (IA) specialists and supporters. Our membership of 80–100 practitioners is made up of academics, researchers and students, and other assorted professionals and interested parties. Our members include many of the leading impact assessment experts in NZ, with longstanding reputations and a wealth of New Zealand, Pacific and international experience. We all share a deep interest in impact assessment, a decision-support method that is one of the most important tools for safeguarding the environment, and the people and communities who rely on it.

Impact assessment involves systematic methodologies for scoping, identification and assessment of relevant impacts, and the evaluation of their significance, across all sectors of the environment (using the RMA definition): biophysical, social, health, culture, etc.

NZAIA is an affiliate of the International Association for Impact Assessment (IAIA), a professional association with some 1700 members located across 120 countries. NZAIA is also partnered with the Environment Institute of Australia and New Zealand Inc. (EIANZ); and the Secretariat of the Pacific Regional Environment Programme (SPREP).

Submission

In reviewing the Freshwater Farm Plan (FW-FP) Regulations discussion document, we have largely focussed on the provisions relevant to good practices in Impact Assessment, a process which lies at the heart of the proposed FW-FP regulations.

1. The need for certified FW-FPs

We support the roll-out of certified FW-FPs as an instrument both to deal with farm management practices and to achieve freshwater outcomes at a catchment level. We also support the intention that FW-FPs will be built on the existing farm plans and brought under the integrated farm planning framework to avoid duplication for farmers and growers.

We recognise that there are some circumstances where impacts of farming activities on freshwater could be effectively managed using FW-FPs without going through costly and timely consents, and it's the intention of MfE to eliminate those unnecessary consents in the future. The use of FW-FPs as an alternative to unnecessary consents will result in less cost burden on farmers and growers and

accordingly create an incentive for farmers to actively participate. Nonetheless, caution and care need to be taken to avoid negative environmental effects when consents are avoided.

Recommendation 1: that a procedure and thresholds for determining and screening out the requirement for unnecessary consents be set in the regulations with sufficient environmental monitoring in place to ensure no negative long-term effects are likely to emerge at a catchment level

2. What needs to be included in FW-FPs

We support the requirements that each FW-FP must show how it will:

- achieve the 'regulated outcomes', which include:
 - o Outcome A: Reflecting catchment values and context (p. 21)
 - o Outcome B: Ecosystem health (p. 21)
 - o Outcome C: Farm practices that respond to environmental needs (p. 22)
- provide an assessment of the impacts and risks of farming activities for waterways
- identify specific and measurable actions the farm operator will take to avoid, remedy, and mitigate those impacts and risks
- comply with any consent requirements or regional or national rules
- provide the 'base information', such as maps, and details of landowners, farm operator, etc.

While values significant to tangata whenua might be already included as part of Outcome A: *Reflecting catchment values and context*, the requirement to show how each FW-FP has had regard to any relevant iwi management planning documents recognised by the council needs to be explicitly stated and emphasized in the regulations. This is to ensure that cultural values are not overlooked or unreasonably taken for granted.

We suggest that each FW-FP might also:

- include a voluntary chapter for general, uncertain or less measurable actions that a farmer may choose to follow in part or fully, and which aim to increase aspirational aspects of the farm plan. An example could be an action to investigate options to improve soil biology
- link additional benefits (other than improvements in water quality) likely to be achieved through practice changes; examples include preventing the loss of topsoil, and greater efficiency of nutrient uptake by plants.

Further, FW-FPs may be considered as a type of environmental management plan (EMP), which are often required as a condition of approval or consent to ensure environmental management practices are followed during a project's construction and/or operation. As a good practice, EMPs usually provide details of *what* environmental management practices are to be implemented, *where*, *when*, and by *whom*.¹ The requirement, as set out on page 12, that "the content of a freshwater farm plan must ... specify requirements (i.e., actions the farmer or grower will undertake) that ... are clear and measurable ..." could trigger the 'what', 'where', and 'when' though the requirement for specifying these needs to be clearly stated in the regulations. Ideally the requirement for specifying 'by whom' should also be required; however, this is not possible in practice because contractors change. If the

¹ See e.g., NSW Guidelines for the Preparation of Environmental Management Plans

'by whom' was required to be specified in FW-FPs, farmers would have to notify the council every time 'by whom' changes.

Recommendation 2: that the proposed regulations explicitly state the requirements:

- to show how each FW-FP will have regard to any relevant iwi management planning documents recognised by the council (as part of Outcome A or an additional regulated outcome),
- to include a voluntary chapter and link alternative benefits (other than improved water quality) likely to be achieved as described above, and
- to define what, where, and when, components of the FW-FP plan will be undertaken, but with sufficient flexibility that councils are not required to be notified when seasonal conditions or natural events prevent the activity from occurring as scheduled.

3. The need for consultation

We are not convinced that FW-FPs should be developed and certified without engaging or consulting with tangata whenua and stakeholders. Specific impacts and associated environmental control measures may not be fully described and therefore need to be discussed with relevant stakeholders. Again FW-FPs may be considered as a type of environmental management plan (EMP) and as implemented elsewhere², Government agencies with environmental protection responsibilities and, where deemed appropriate, the broader community are both consulted in the EMP process; however, such consultation is limited to matters relating to specific conditions and issues.

On the other hand, the requirement for every FW-FP to go through consultation might not be practical from a legislative point of view and logistical reasons. Consultation is not required under the RMA, and there have been arguments for who are relevant tangata whenua and stakeholders. For instance, tangata whenua in parts of the North Island have argued their cases against each other's status in the courts. Further, consultation would require professional services of impact assessment consultants, which might be in a short supply in NZ. Such professional services are too costly for lifestyle block holders and small-holder farmers; therefore, they might be out of business if the costly consultation is required.

Recommendation 3: that consultation with tangata whenua and stakeholders on matters relating to specific conditions and issues be strongly encouraged but not required for major farm conversion activities. This consultation should be enabled for groups of farmers to undertake on a collective basis for a defined area, such as by catchment groups or irrigation companies.³ A guidance on how to identify relevant tangata whenua and stakeholders and how to undertake consultation should be developed to create consistency in the consultation process.

4. The use of the term 'impact/risk assessment'

Environmental impact assessment – EIA (also known as *assessment of environmental effects* – AEE under the RMA) is defined as “the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being

² See e.g., NSW & ACT Guidelines for the Preparation of Environmental Management Plans

³ Some farmers already act as a collective for consultation purposes and development of Farm Environment Plans

taken and commitments made”.⁴ Risk assessment considerations (including human health and/or ecological risks) have been increasingly incorporated in the EIA (or AEE) process.⁵ For instance, assessment of any risk to neighbourhood, community and environment is required as part of AEE under the RMA. It is important to be clear that risk assessment is a process that can only be used once specific impacts that could result in severe adverse consequences (for human health, ecological wellbeing, etc.) have been identified through the broader impact assessment process. In this sense, risk assessment is used to decide priorities for action. The use of the compound label of ‘impact/risk assessment’ introduces unnecessary confusion, in terminology and over processes to be used.

Recommendation 4: that ‘impact assessment’ be used instead of ‘impact/risk assessment’ when referring to the overall process, with the explicit requirement that the impact assessment must include an assessment of any identified impact that might pose a specific risk to freshwater, using a robust method of risk assessment, to decide priorities for action.

We support ‘Option 1: Specify the minimum general requirements for an impact assessment’ (p. 24) with guidance and technical support accompanying the regulations to demonstrate what should be considered when carrying out an impact assessment. As already identified in the discussion document, Option 1 is preferred to ‘Option 2: Prescribe the methodology for risk/impact assessment)’ (p. 25) because Option 1 allows for flexibility to adopt the most effective methodology for a farm impact assessment.

While we support the specification of the minimum general requirements and as risk assessment is a critical part of impact assessment in this context, we think it’s necessary to describe the general concept of risk assessment and list some applicable methods such as risk ratings based on probability of occurrences and severity of consequences, or based on hazards, exposure and vulnerability.

Recommendation 5: that the basic concept of risk assessment be described and some robust, applicable methods for risk prioritisation be listed.

5. Determining actions to avoid, remedy or mitigate impacts and risks

We support ‘Option 3: A hybrid between Option 1 and Option 2’ as the preferred approach to determining actions to avoid, remedy or mitigate impacts and risks. As already identified in the discussion document, having prescribed practice standards for managing high priority risks (Option 2) is important for ensuring consistency across the farm planning system and providing more certainty that high-risk activities are well controlled. On the other hand, leaving certifiers to determine actions to manage low-risk activities based on their professional judgement and regulatory high-level factors (Option 1) allows for flexibility to adopt the most effective technologies and farming techniques as and when they become available.

In undertaking their role, the certifiers should be required to justify each action in terms of:

- contaminant identified and the method used to do this (usually nitrogen, phosphorus, microbes, or sediment or other environmental pollutant);
- how the contaminant is predicted to be lost to the environment;

⁴ IAIA Principles of EIA Best Practice

⁵ <https://www.iaia.org/wiki-details.php?ID=22>

- why the chosen action is best in terms of addressing the underlying issue by preventing or minimising the contaminant loss to the environment;
- the alternatives that could be undertaken or that were considered including costs, labour, materials and time to achieve them;
- any uncertainty in making their assessment.

Recommendation 6: that high priority risks that need to be managed by prescribed practice standards be specified, and the factors that certifiers need to consider when determining mitigation actions (as for example discussed above) be set in the regulations.

6. How FW-FPs fit with regional council planning processes

We support the idea of specifying what is expected to be included in regional freshwater plans (p. 13) as this would create some level of consistency across the regional planning system and certainty that national objectives are well controlled.

According to the National Policy Statement on Freshwater Management, regional councils are required to use the hierarchy of Te Mana o te Wai in setting out objectives and standards in their regional freshwater plans. The hierarchy broadly prioritises sustaining ecosystems, then human needs, followed by commercial uses. Given this and because many freshwater ecosystems show signs of degradation, regional freshwater plans should aim to achieve a net gain in ecological outcomes.

Strategic environmental assessment (SEA) can be a useful tool to guide the development of regional freshwater plans to achieve a net gain in ecological outcomes and make plan development more consistent across the regional planning system. SEA⁶ is a tool that can be used in three main ways:

- to prepare a strategic development or resource use plan for a defined land, FMU and/or ocean area;
- to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; and
- to assess different classes or types of development projects, so as to produce general environmental management policies or design guidelines for the development classes/types.

All three types of SEA aim to create a context for sustainable and resilient development, and to avoid or minimise cumulative impacts from individual farm plans. This is done by:

- identifying what forms of development are environmentally sound and appropriate;
- pinpointing locations where developments are/are not permissible;
- stipulating desired types and characteristics of developments; and
- identifying broad environmental management measures that need to be followed.

Recommendation 7: that a net gain in ecological outcomes be required as an objective of regional freshwater plans, and SEA be promoted to achieve this objective. The proposed regulations must make it clear that regional freshwater plans set the context for farm plans, and that while farmers would not be responsible for producing SEAs they would have the opportunity to have a significant input.

⁶ <https://www.nziaa.org.nz/strategicenvironmentalassessment.html>

Achieving a net gain in ecological outcomes will inevitably require additional conservation actions beyond offsetting residual impacts. This might be best achieved at a system (regional) level as it's unlikely that farmers and growers would be willing to implement additional conservation actions through FW-FPs without compensation for the costs incurred. The recent farmers' protest against stock exclusion regulations strongly suggests this. As additional conservation actions will generate ecological outcomes that are socially, culturally and environmentally beneficial to the wider public, the Government might be able to use environmental taxes to recycle money into ecological restoration projects and/or to compensate farmers and growers for the costs incurred in implementing additional conservation actions. There is increasing evidence that many New Zealand farmers are willing or accepting of the need to set aside land and pay for biodiversity and cultural outcomes and that communities are active in supporting these efforts.

The ethic of stewardship is recognised in Part 2 of the RMA and is an important concept for non-tangata whenua farmers (as they are unable to exercise kaitiakitanga), but it receives little recognition or support through RMA plans or policy statements. Many farmers already operate as good stewards of land and freshwater and this needs to be acknowledged and supported, rather than penalised through additional regulatory requirements.

Recommendation 8: that compensatory schemes (including biodiversity offset and payment for ecosystem services) be promoted to allow for flexibility to achieve desired ecological outcomes and that good stewardship actions be recognised through compensatory provisions in regional and district plans. These are to be promoted through regional policy statements.

This submission has been prepared on behalf of the NZAIA by:

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