

24 September 2021

Customer Services
P. 03 353 9007 or 0800 324 636

200 Tuam Street

PO Box 345
Christchurch 8140

www.ecan.govt.nz/contact

Freshwater Farm Plan Regulations Consultation
Ministry for the Environment
PO Box 10362
Wellington 6143

Tēnā koutou,

Environment Canterbury submission: Freshwater Farm Plan Regulations

Thank you for the opportunity to provide comment on the proposals contained in the *Freshwater Farm Plan Regulations* discussion document. Environment Canterbury's submission on the *Freshwater Farm Plan Regulations* discussion document is attached.

Our submission is in three parts; opening comments, responses to the specific questions asked in the discussion document, and responses to the questions asked in the initial regulatory impact statement.

We welcome the opportunity to continue to work with the Ministry for the Environment and Ministry for Primary Industries to share our experiences and help develop practical solutions to support the freshwater farm plan system.

For all enquiries please contact:

Fiona Myles

Principal Strategy Advisor

Phone: 027 327 6194

Email: fiona.myles@ecan.govt.nz

Yours sincerely



Jenny Hughey

Chair, Environment Canterbury

Encl: Submission to the Ministry for the Environment on Freshwater Farm Plan Regulations

Our ref:

Your ref:

Contact:

Submission to the Ministry for the Environment

Freshwater farm plan regulations

Introduction

1. Environment Canterbury welcomes the opportunity to comment on the intended direction set out in the *Freshwater farm plan regulations* discussion document.
2. This submission is presented in relation to Environment Canterbury's roles, functions and responsibilities under the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA). It also draws on the experience of implementing our Farm Environment Plans (FEP) and FEP audit programme under the current Canterbury framework.
3. This submission is split into three parts: general opening comments regarding matters that apply to the freshwater farm plan (FW-FP) system as a whole, individual responses to specific questions raised in the freshwater farm plan discussion document, and the questions asked in the *Freshwater farm plan regulations: Initial regulatory impact analysis of the proposed options*.
4. We acknowledge there are still many details regarding the form of the freshwater farm plan system and how it will be implemented that are yet to be confirmed. Environment Canterbury welcomes the opportunity to continue to work with the Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) to share our experiences and help refine details through the implementation of pilot programmes.

Opening comments

Our existing Farm Environment Plan (FEP) and Audit System

5. We welcome the opportunity to provide feedback through this consultation on a range of detailed design and technical issues for freshwater farm plans, and how these will be certified and audited. In Canterbury, we have shown leadership in the use of farm plans and are pleased to see the value of farm plans as a tool recognised by central government.
6. We have been using an established Farm Environment Plan (FEP) and FEP audit system for a number of years. Our experience shows that FEP and the FEP audit system provide landowners with sufficient flexibility to identify risks and develop tailored solutions to manage impact on water ways.
7. Our programme has been very successful to achieving widespread acceptance of the need for improvements in freshwater and uptake of industry agreed Good Management Practices (GMP) across the region. Progress has also been made in

the use of FEPs to increase understanding within the farming community of mahinga kai values.

8. To date we have focused on environmental impacts of high-risk farms (e.g. those with intensive winter grazing or large areas of irrigation) by ensuring they are operating at GMP. Our current planning framework also identifies the need, in some catchments, to go “beyond GMP” to achieve plan objectives. We support the intention of the FW-FP system to actively contribute to giving effect to Te Mana o te Wai and the hierarchy of obligations under the National Policy Statement for Freshwater management (NPS-FM) and welcome further discussion as to how the FW-FP tool can be used to meet these objectives and timeframes.
9. Our FEPs and FEP audits are used within a consenting framework to balance the flexibility provided by the FEP with a level of enforceability. The discussion document indicates that farm plans will be “increasingly relied on, reducing the need for consents and hard and fast rules”. In principle, we welcome this intent to reduce the need for consent and rulemaking.
10. However, our experience from implementing our FEP system is that the resource consent framework plays an important role in the absence of other regulatory instruments. A FW-FP that is independent from the resource consent process may be difficult to enforce. Certifiers and auditors that operate independently from the regional council will not have the authority to enforce regulations on behalf of the regional council. There are also other benefits from the integration with the resource consenting framework including allowing the broader and cumulative effects of an activity to be considered. Further clarity is required to better understand the relationship between the FW-FP system and regional council planning processes, particularly with regard to how cumulative effects as well as any collective or non-statutory actions (e.g. from NPS-FM 2020 action plans) are considered.

Phased Implementation

11. In this context of an already established framework, Environment Canterbury supports the phased approach to transition and implementation but considers that the specifics of the phased approach should be considered further. We would like the progress made by our farmers already operating under FEP and GMP to be recognised in the transition process.
12. We accept that our FEP system does not meet the requirements of Part 9A of the RMA and is therefore not equivalent to a FW-FP. However, we request that Environment Canterbury’s FEP system be accepted as an alternative for a short term, transitional period, preferably until new freshwater regional plans are made operative.
13. We recognise that this approach is specific to our region and may not be appropriate everywhere. Environment Canterbury suggests that each region should therefore be able to provide direction on the best implementation for their individual circumstances and get an individual bespoke solution approved by the Minister for implementation.

14. The phased approach should also consider how the FW-FP regulations interact with the National Environment Standards for Freshwater (NES-F). Some activities (e.g. intensive winter grazing, and the use of some stockholding areas) are capable of being a permitted activity under the NES-F where a farmer has obtained a certified FW-FP. More detail is provided in our response to Question 5.

Role of mana whenua

15. Environment Canterbury supports the direction set out in the discussion document to improve opportunities for mana whenua to be involved throughout the FW-FP system. We also acknowledge capacity constraints facing mana whenua.

Role of the certifier

16. The role of the certifier is pivotal in ensuring the intention of the FW-FP system is met – *to actively contribute to giving effect to Te Mana o te Wai and the hierarchy of obligations under the NPS-FM*. We seek clarity on the intended role of the certifier as an advisor or certifier, or both. On the one hand, we see the benefit in engaging an advisor to ensure the content of the farm plan has been included – acknowledging also that nothing precludes the farm operator from developing the freshwater farm plan by themselves. On the other hand, from a regulatory perspective, we are aware that a clear distinction between advisory and certification roles may be needed, where that role is a check on the adequacy or completeness of the work in question. We propose this could be mitigated through a robust national accreditation process and the professional competence of the certifier

Proportionality

17. Environment Canterbury accepts the rationale for requiring the majority of farms to have FW-FPs to help manage their impacts on freshwater. We support the potential benefits that this could bring, including greater consistency in management approaches across a catchment and a focus on the suite of attributes in the NPS-FM 2020.
18. If FW-FPs are to apply to most farms, we consider it important that the regulations be written to include, or at least not preclude, the principle of proportionality. The risk assessment-based approach described in the discussion document is aligned to this principle, but we support this being made more explicit within the regulations. This will ensure the costs associated with implementation of the regulations are relative to the risks to freshwater that an individual farm poses.

Integration with Essential Freshwater and the wider reforms

19. Environment Canterbury recognises that the FW-FP regulations sit alongside other tools and regulatory instruments as set out in the Essential Freshwater package, such as the IWG module. We also recognise that given the timeframe for establishing the FW-FP system, the outcome of the resource management reform will likely influence the implementation of FW-FP system in time.

20. We consider the FW-FP system will need to be fit for purpose in a future 'post-RMA' legislative environment. The exposure draft of the Natural and Built Environments Act (NBE) indicates a stronger emphasis on planning for outcomes in addition to managing effects.
21. We welcome continued engagement and discussion with MfE and MPI on the design of the FW-FP system and its integration with other components of Essential Freshwater and the wider reforms.

Specific questions from the discussion document

Submission Question 1: What other information should we consider about how the FW-FP system fits with regional council planning processes, and why?

22. We consider further clarity is required to better understand the relationship between the FW-FP system and regional council planning processes. These include the intent of the FW-FP system and its relationship with the roles, duties and responsibilities of regional councils in connection with the implementation of the other components of the Essential Freshwater Programme and the content of regional plans, the management of cumulative effects, and enforceability.
23. In webinars undertaken during the consultation period, MfE has indicated that they see regional council plans or other methods as the primary mechanism for driving improvements in freshwater where required (e.g. in those catchments where the current state is not aligned to the freshwater outcomes established under the NPS-FM 2020). We welcome the opportunity to discuss further with MfE how the FW-FP system can complement and be consistent with regional plans or other methods that seek to drive changes in these circumstances. Environment Canterbury considers the success of the implementation of the FW-FP system in our region to depend on effectively integrating the FW-FP system into the regional planning system in these circumstances.

Submission Question 2: What information should we consider regarding the role of tangata whenua in the FW-FP system?

24. We support the direction in the discussion document to improve opportunities for mana whenua involvement in the FW-FP system. We acknowledge there can be capacity constraints for mana whenua and agree that in the short term it is not appropriate to expect iwi advice on every FW-FP. To manage capacity constraints, we expect that mana whenua involvement would be most efficient if embedded through constructs such as the catchment context, rather than in the transactional aspects of preparation of individual farm plans. However, until we have a clear understanding of what Te Mana o te Wai means in our region, we would not want to constrain mana whenua involvement in the FW-FP system. We recommend the regulations allow for flexibility so mana whenua can determine how they want to be involved in the FW-FP system without being precluded by the regulations.

25. Our experience in Canterbury is there has been a willingness from the farming community to accept the mahinga kai component of the FEP system. However, we note that 'on the ground' action is challenging without the right people, with the right skills, knowledge, mandate and financial support. We anticipate achieving 'on the ground' actions to be more challenging on farms that do not require consent under a regional plan, and therefore where less engagement has taken place to-date. We welcome the intention to increase competencies for actors in the system and provide support through locally prepared guidance and/or strategy material but consider implementation knowledge gaps can also remain.

Submission Question 3: What other information should we consider regarding the proposed role for industry assurance programmes and other farm plan initiatives in the FW-FP system?

26. We agree that adapting existing industry programmes and council led programmes, such as FEPs, will provide a smoother transition for farmers and growers and build on the good practices that have already been identified. We consider the proposed national body should review and approve industry programmes to ensure they satisfy both process and outcome requirements of the FW-FP system. We also suggest that regional councils should retain the ability to influence which industry programmes are appropriate to operate in their regions.
27. However, Environment Canterbury notes that there may be some circumstances where the regulated outcomes and the catchment context are not aligned with the existing scale and nature of the farm activity. In these circumstances, robust review and approval processes from the national accreditation body will be particularly important
28. We consider regional councils are best placed to adapt existing FEP programmes to meet the requirements of the RMA and local priorities. This would apply beyond the transition period (see the response to Question 5).

Submission Question 4: What are the likely impacts and cost implications of the proposed approach?

29. The likely impacts and cost implications of adopting a national approach for the approval of industry programmes is considered more cost effective than approval being sought from each Council, particularly for those industry programmes already operating nationally.

Submission Question 5: Do you agree with our proposed approach for transitioning to a fully implemented system? If not, why not?

30. Environment Canterbury agrees a phased or staged approach to the requirement for a FW-FP is appropriate as this recognises that in the short term there are likely to be capability and capacity constraints in the rural sector preparing FW-FPs and the ability for regional councils to provide the required support.

31. The existing FEP system in Canterbury has been effective at moving farms to good management practice and is focussed on those farms that present the greatest risks to freshwater. We consider the good progress made to-date by farms operating under the FEP system should be recognised by allowing them to stand in place of a FW-FP in the short term (for example, until a new freshwater regional plan is operative).
32. We acknowledge that our FEP system does not fully meet the requirements of Part 9A of the RMA, but this approach would recognise the considerable time and cost the farming community has already invested to improve environmental outcomes. It will also enable the catchment context to be more fully developed to better support any further actions needing to be taken by farms to meet freshwater outcomes established under the NPS-FM 2020. We welcome the opportunity to continue to work with the MfE and the MPI to address any specific concerns such as ensuring the content of FEPs incorporate any specific matters considered necessary to enable them to stand in place for a FW-FP during the transition period. This approach to transition would also enable Environment Canterbury to focus on farms where there has been limited engagement with the regional council to-date and provide the necessary support to promote compliance with the regulations.
33. Not recognising the work already done may raise significant issues of fairness for farmers who have FEPs that address the same or similar issues as the freshwater farm plans and who would now need to obtain resource consents for activities that are already being managed (see comments below regarding the NES-F). This risks those farmers who are already 'ahead of the game' becoming disengaged and undermines delivery of freshwater outcomes.
34. Implementation of the phased approach should consider how the FW-FP regulations interact with other regulations. In particular, some of the regulations in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) do not apply where a farmer has a certified farm plan e.g. the intensive winter grazing regulations. The phased approach therefore needs to consider the equity issues of requiring some farmers to obtain consents, and then also obtain certified farm plans at a later date, versus those who are advantaged by having certified farm plans 'phased in' earlier.
35. We agree with the proposal that the first tranche of FW-FPs prepared, where an existing FEP is not place, would use the best local information and catchment context available at the time.
36. We note that Questions 44 to 46 of the discussion document considers the implementation of FW-FPs. We request our response to Question 5 is read in conjunction with our responses to Questions 44 to 46.

Submission Question 6: Do you agree with the preferred option for how regulated outcomes could be described in regulations? If not, what is your preference?

37. Environment Canterbury agrees the challenge of the two options is striking a balance between making the regulated outcomes to be considered by FW-FPs general enough to be flexibly adapted for each freshwater farm and farm system, but specific enough to be measurable and enforceable. There will also be challenges in determining how FW-FPs will mesh with other regional council freshwater policies and objectives in a way that complements rather than conflicts with other regulatory tools.
38. Environment Canterbury agrees the preferred option provides flexibility for the certifier to exercise professional judgement and tailor how the regulated outcomes and regional plan requirements can most appropriately be achieved. This would be undertaken within a framework of guidelines and practice standards to support the decision-making of the certifier. We agree the preferred option is appropriate where the regulated outcomes and the catchment context align with the existing scale and nature of the farm activity.
39. Our experience of FEP implementation in Canterbury is that a flexible approach helps build acceptance by farm operators. The ability for regulated outcomes to be tailored to the context through professional judgement rather than specified in regulations is also considered to be more cost effective.
40. However, where the regulated outcomes and the catchment context does not align with the scale and nature of the existing farm activity then we do not consider the preferred option will necessarily be appropriate. These concerns relate to the need for further clarification of the authority of the certifier to ensure the actions of the FW-FP give effect to Te Mana o te Wai and the interrelationship of the freshwater certifier with the regulatory role of the regional council, particularly in relation to the management of cumulative effects. As noted in our response to Question 1, we consider the success of the FW-FP system in our region will depend on how it is integrated with regional planning in those circumstances where meeting limits set under the NPS-FM 2020 require significant change in on-farm practices.
41. We also note the discussion document indicates that central government intends to develop guidance on how a farm operator and certifier can define ecosystem health as a regulated outcome. We agree this is necessary to enable identification and measurement of ecosystem health on the ground.

Submission Question 7: What are the likely impacts and cost implications of the preferred approach?

42. Environment Canterbury does not consider the preferred option will be appropriate in those circumstances where the regulated outcomes and the catchment context do not align with the scale and nature of the existing farm activity. In catchments where significant change is required to meet the freshwater outcomes set under the NPS-FM 2020, we consider the system is unlikely to deliver the outcomes of Te Mana o te Wai and the catchment context. It is unclear what the role of the certifier will be to drive necessary changes in farm practices. Clarity is required around how the FW-FP will integrate with regional planning processes in these circumstances.

Submission Question 8: Does the material in Appendix 1 cover all the base information that should be mandatory for inclusion in FW-FPs? If not, what else should be considered and why?

43. Environment Canterbury agrees the 'base information' contained in Appendix 1 is appropriate and should be expanded to enable such other information that may be required following co-design of regional plans with mana whenua and any catchment specific issues identified in the content of regional plans. For example, a requirement to identify as part of farm mapping, the presence of culturally significant rock-art sites that may be adversely impacted by farming activities (e.g. irrigation). In conjunction with the ability for regional councils to require additional information in a FW-FP there should also be a corresponding ability for regional councils to require additional certification requirements of certifiers to match. We recognise that information required as base information or additional information required by a regional council should not impinge unnecessarily on privacy. For example, financial data or investment costs would be considered inappropriate for inclusion.
44. We also consider the reference to a "farm operator" as "the person responsible for preparing the FW-FP" in Appendix 1 may not be appropriate in all circumstances. A farm operator may be responsible for day-to-day management actions on a farm, but may not be responsible for more significant decisions such as those where investment is required.
45. Environment Canterbury notes the intent signalled in the discussion document that once the Freshwater Farm Plan system is fully operational it will align to He Waka Eke Noa and the requirements to report greenhouse gas emissions. We note that there may be climate change considerations that could be incorporated into a freshwater farm plan as base information once it is clearer how this alignment might take place.

Submission Question 9: What are likely impacts and cost implications of the proposed requirements in Appendix 1?

46. Environment Canterbury expects the impacts and cost implications of the requirements in Appendix 1 to be reasonable as these requirements are similar to our existing FEP requirements.

Submission Question 10: Do you agree with our preferred option? If not, what is your preference?

47. Environment Canterbury agrees with the preferred option (option 1) and considers the minimum requirements specified in the regulations for a risk/impact assessment methodology should include (in addition to those stated in the discussion document) the need to assess the cumulative effects risk of the inherent and management risks identified for the farm. In connection with this we consider the regulations and guidance should state that the choice of actions in response to the risk/impact assessment should seek to ensure cumulative risks are minimised.

48. We also consider that the regulations need to acknowledge that, depending on the catchment context and limits set in regional planning, the appropriate way to minimise risks/impacts may go beyond good management practices relating to the existing activity to examining the appropriateness of the existing activity. In this context, robust and transparent processes are required to provide the wider community with confidence in the outcome of a risk assessment. This can be provided through a robust national accreditation process and the professional competence of the certifier.

49. This matter is further discussed in connection with Question 13 regarding the identification of actions. The risk of 'client capture' in the role of the certifier is also pertinent and discussed in connection with Questions 18 to 21 regarding the role of the certifier.

Submission Question 11: What information should be included in guidance to inform the risk/impact assessment, and why?

50. Information to be included in the guidance to inform the risk/impact assessment should be informed by the principles of Te Mana o te Wai, industry agreed Good Management Practices¹, and relevant contents of the regional plan to recognise the catchment context and the views of mana whenua. We consider that guidance should be regularly reviewed and updated to reflect the latest research and innovation in the sector.

Submission Question 12: What are the likely cost implications of a risk/impact assessment? Is a flexible approach more cost effective?

51. While individual farm by farm risk assessments will incur cost, it is considered the flexibility of the preferred option enables a targeted response to be developed that is more cost effective as a whole.

Submission Question 13: Do you agree with our preferred option? If not, what is your preference?

52. Environment Canterbury does not support the preferred option (option 3) in the discussion document. Environment Canterbury's preference is option 1 provided the training and national accreditation for the certifier provides sufficient rigour and robustness. That said, we consider for both options further clarification is needed of the role of the certifier to ensure consistency in the implementation of freshwater outcomes.

53. It is critical that the actions the certifier considers should be undertaken on-farm align with those required by the catchment context and the regional plan. There is potential

¹ Industry-agreed Good Management Practices relating to water quality, 18 September 2015. ISBN: 978-0-947490-98-0.

for disconnect between these where the identification of actions in FW-FPs are not consistent with the actions required to implement Te Mana o te Wai.

54. For example, the discussion document indicates that FW-FP actions should be tailored to the farm system '*accounting for co-benefits and costs*'. Actions would be considered in the context of the '*individual farm, the farm objectives and the freshwater farm plan*'. In connection with option 1 the discussion document states that whether the action is '*suitable to the enterprise and/or receiving environment*' and '*cost effective*' should be considered alongside whether the action is '*effective*' and '*long lasting*'. Further clarification of how these considerations will apply is needed. For example, over what time frame will cost-effectiveness and affordability be considered, and what will this look like in the context of giving effect to Te Mana o te Wai.
55. The options in the discussion document also place considerable importance on the professionalism and competency of the certifier to identify actions in FW-FPs. However, the certifier lacks the authority to require actions, including, for instance, the right to access private land. The discussion document recognises that the flexibility provided to certifiers by option 1 may result in a lack of consistency in terms of the '*urgency and ambition*' of the actions in FW-FPs.
56. The potential for disconnect between the actions identified by a certifier and the implementation of freshwater outcomes to achieve Te Mana o te Wai may also arise in relation to the identification of cumulative effects. A certifier would not necessarily be able to determine a farm's contribution to cumulative effects in a catchment as the certifier may not have knowledge of all actions being taken collectively by multiple FW-FPs.
57. Environment Canterbury further considers the role of the certifier and the regulatory role of the regional council requires clarification. For example, the regional plan framework may require additional provisions to be included within a FW-FP for an activity in a specific catchment to qualify as a permitted activity. It is unclear how a certifier external to a regional council could require actions in a FW-FP that meet more stringent plan requirements as they would be unable to require regulations on behalf of a regional council. Similarly, if a condition of resource consent requires more stringent provisions to be included within a FW-FP it is unclear what the role of a certifier and the regional council would be with regards to compliance and enforcement.
58. Environment Canterbury sees considerable value in freshwater farm planning. Our experience in Canterbury is a FEP system which operates within the resource consent framework, involves the use of auditors in an independent capacity, enables the content of farm plans and impacts on cumulative effects to be assessed against the objectives of the regional plan, and provides a framework for effective enforceability.
59. We note from the webinars undertaken during the consultation period that MfE envisages that regional council plans or other methods will be the primary mechanism for driving improvements in freshwater outcomes where required (e.g.

those where the current state is outside of national bottom lines for particular attributes).

60. Environment Canterbury would welcome the opportunity to discuss further with MfE how the FW-FP system can complement and be consistent with regional plans or other methods that seek to drive improvements in these circumstances. For example, if the regional plan identifies FW-FPs as one of a suite of tools to deliver improvements, how will the certifier be empowered to ensure the FW-FP system is capable of delivering its part without impinging on a landowners rights? This may necessitate a certifier having a very broad set of skills which (in addition to those identified in the discussion document) include business and financial planning, such as assessing strategies to pay down debt to facilitate transition planning. In such situations we anticipate that certifiers may operate as teams and draw on external expertise as required (such as from mana whenua). However, whether the resources are available, and whether the farm operator is willing to pay for these services, could impact on the effectiveness of the FW-FP system.
61. Environment Canterbury's experience with FEPs within a consenting framework has found this is an effective mechanism for the regulator to be involved. We recommend a similar approach with certifiers to support a robust system with better alignment with a regional council's implementation of the Essential Freshwater package and greater transparency for the wider community. Environment Canterbury would welcome the opportunity to continue to work with the Ministry for the Environment and the Ministry for Primary Industries to share our experience of the FEP system to help develop solutions.

Submission Question 14: What are the likely impacts and cost implications of the preferred options?

62. Environment Canterbury agrees in general terms that less prescriptive approaches to the content of FW-FPs are preferable to ensure the most effective actions are prioritised. While flexibility is necessary for effective application nationwide, in our experience it can also lead to increased complexity during implementation due to the demand for bespoke approaches. We recommend the provision of flexibility is balanced with consistency across catchments.
63. Environment Canterbury is concerned that the freshwater farm plan system will require the use, and separate engagement of; an advisor (to write some or all of the plan), a certifier (to confirm the plan meets requirements), and an auditor (to audit the farm for compliance with the certified freshwater farm plan), each requiring additional costs.

Submission Question 15: Do you agree with our preferred approach? If not, what is your preference?

64. Environment Canterbury agrees that the timeframe to implement the actions identified in the FW-FP will vary depending on the circumstance. There are capacity and capability constraints in the rural sector that mean the scheduling of actions will

need to recognise the availability of some services needed to implement certain actions.

65. We acknowledge the message from MfE during the recent webinars, that the drive for change to meet freshwater outcomes as required by NPS-FM 2020 will need to come from regional plans and other methods. Environment Canterbury therefore seeks further clarity on the intended role of the certifier balancing the needs of 'reasonableness' and 'reasonable and affordable' to the farm operator and giving effect to Te Mana o Te Wai and the hierarchy of obligations, particularly where significant investment is involved.
66. We consider that a robust and transparent national accreditation system will be essential in these circumstances to ensure the wider community has confidence in the FW-FP system.
67. There is also a need for further clarity how the roles of certifier and the regional council will interact to ensure adequate management of cumulative effects in the catchment context, particularly where the certifier has not been involved in all other FW-FPs in the catchment. This also applies to the relationship of the certifier with the resource consent process.
68. We note that guidance would be provided for how to apply the reasonableness test and that the FW-FP system includes other methods intended to ensure the role of the certifier is robust and these may provide further clarity around these matters. With respect to the proposed guidance, we consider central government should provide this guidance to ensure consistent application across the country. For example, through the provision of criteria that must be applied in assessing reasonableness.

Submission Question 16: Do you agree with our preferred option? If not, what is your preference?

69. Environment Canterbury agrees with the preferred option (option 1) whereby certifiers would be nationally accredited and appointed by regional councils on the basis of their knowledge and understanding of the regional and catchment context. The proposal for regional councils to also develop, or input into, the regional assessments is supported. This aligns with our earlier response (in connection with Questions 8 to 9) that there should be an ability for regional councils to require additional 'baseline' information to be provided in a FW-FP to recognise the outcome of co-design of regional plans with mana whenua and any catchment specific issues identified in the content of regional plans.
70. Environment Canterbury has earlier commented on the need for the national accreditation process to be thoroughly robust as it is a central component of the FW-FP system proposed in the discussion document. We also consider it important that the benefits of accreditation (i.e. the ability to offer services within a FW-FP system) are supported by consequences for not upholding the expected standards, such as the ability to lose accreditation (question 32). To achieve behaviour change to ensure

confidence in the certification process, the combination of incentive and consequence is required. This will also apply to the audit component of the system.

Submission Question 17: What are the likely impacts and cost implications of the preferred approach?

71. We believe that certification via regional accreditation processes as proposed in Option 2 would likely lead to duplication of effort across the country for limited benefit.

Submission Question 18: Do you agree with the following assumptions? If not, why not?

a) In most circumstances certifiers will need to 'walk the farm'.

b) Certifiers can call on expert advice for matters outside their areas of expertise.

72. Environment Canterbury considers that 'walking the farm' is necessary to properly identify risks/impacts and actions. In view of the potential for constraints on the capacity of certifiers to undertake this, it is considered that for low risk farms a mechanism similar to that used by a chartered professional engineer could be available. This would allow suitable other persons to walk the farm under the certifier's direction while still requiring the certifier to sign off and take responsibility for the plan.
73. The scope of FW-FPs will require a certifier to have knowledge on a range of specialised topics (planning, farm systems, environmental monitoring, mahinga kai etc.). We do not consider that one single person would necessarily hold such diverse knowledge to a sufficient level and therefore support certifiers being able to call on expert advice to support their decisions.

Submission Question 19: Do you agree with our preferred option? If not, what is your preference?

74. Environment Canterbury agrees with the preferred option (option 1). We acknowledge that there are capability and capacity constraints in the rural sector, and Option 1 provides a mechanism for addressing this.
75. We consider the role of the certifier to be fundamental to the function of the proposed FW-FP system and note the concerns regarding the risk of "client capture" as outlined in the discussion document. Under our current FEP system in Canterbury, our FEP auditors are prevented from advising on or undertaking the preparation of the FEP for this same reason.
76. Environment Canterbury agrees that this risk can be adequately mitigated through robust processes around certification such as national accreditation, quality assurance processes and professional standards.

77. We consider these mitigations will be of particular importance in those circumstances where the regulated outcomes and the catchment context do not align with the scale and nature of the existing farm activity, due to the limits set through regional plans. In these circumstances, where a farmer may need to make substantial investment in farm system and/or land use change.

Submission Question 20: Should there be a limit to the number of times a certifier can re-certify a FW-FP for the same farm operator?

78. Environment Canterbury do not consider there should be a limit on the number of times a certifier can re-certify a FW-FP because of the capacity and capability constraints within the rural sector. If the accreditation process, quality assurance and professional standards are robust and transparent, then there should be no need to impose a limit on the number of times a certifier can certify a plan.

Submission Question 21: What are the likely impacts and cost implications of the preferred approach?

79. We agree with the discussion document that Option 1 may lead to cost efficiencies.

Submission Question 22: Do you agree with our preferred approach? If not, what is your preference?

80. Environment Canterbury considers that if the role of the certifier includes advising the farm operator in the development of the FW-FP in addition to certification (as per MfE's preferred option question 19), then it is appropriate that it is a user-pays service and certifiers be directly engaged by the farmer.
81. Further clarity is required here as to the certification role and the institutional structures supporting this role - in other words, who the certifier is working for. If certification is a check for completeness on behalf of a council or national body (i.e. to determine whether the FW-FP is compliant as per Part 9A of the RMA), then the council or the national body may need to manage engagement and payment as is the approach with recognised assurance and certification providers.

Submission Question 23: What are the likely impacts and cost implications of the preferred approach?

82. We agree with the discussion document that the preferred option may lead to cost efficiencies.

Submission Question 24: Do you agree with our preferred option? If not, what is your preference?

83. Environment Canterbury does not agree with the preferred option. We would prefer that rather than undertaking a re-certification process every 3 or 5 years (where no changes have taken place that would otherwise trigger the need for a new FW-FP) it

would be more appropriate for the regulations to require re-certification when a farm has been assessed in the certification risk assessment to have a high (inherent or management) risk. A certifier, accredited through a robust national system as per our preference would be well placed to determine an appropriate frequency on this basis. This approach would be better aligned to the principle of proportionality. In view of the cost implications to the farm operator of re-certification, this approach requires the certifier accreditation process to be robust and consistent in the way risk assessments are undertaken. If we were constrained to either option in the discussion document, we would prefer Option 2, where re-certification occurs every 5 years.

84. It is noted that a new FW-FP would be required where substantive changes take place in all other cases (this is discussed under Questions 26 and 27).

Submission Question 25: What are the likely impacts and cost implications of the preferred approach?

85. We consider the cost of re-certification in line with the preferred approach of every 3-5 years to be very high for those lower risk farms where no substantial change is occurring in practice from one year to the next. The approach Environment Canterbury prefers as described in Question 24, would have lower costs for these farms, in proportion to the risk they pose to the environment.

Submission Question 26: Do you agree with the proposed categories and triggers for new FW-FPs, addendums, and amendments? If not, what is your preference?

86. Environment Canterbury agrees with the proposals in the discussion document. We also consider a certifier or auditor should have a role alongside regional councils to ensure these processes are carried out. We note that under the proposals, regional councils would not hold copies of the certified FW-FPs and so would be reliant on the honesty of farmers to identify when a new plan or addendum was required and the audit process amended.

Submission Question 27: What are the likely impacts and cost implications of the preferred approach?

87. We note that if the certifier is also to act in the role of farm advisor as per MfE's preferred option (Question 18-21), then you would expect that changes to a farm system that trigger the need for a new farm plan would be made based on the advice of the certifier (or experts they have called upon for support) already involved. They should therefore be well placed to update any existing FW-FP.

Submission Question 28: Do you agree with our preferred approach? If not, what is your preference?

88. Environment Canterbury agrees with the preferred approach, provided that the training and accreditation of the certifier provide sufficient rigour.

89. Environment Canterbury considers the functions, powers, and duties of all actors in the FW-FP system needs to be clearly defined in the regulations. This includes when the FW-FP is operating within a resource consent process or not. This will clarify the authority of the certifier within the FW-FP process in relation to issues of authority, their role as a regulator, and the role of other relevant regulators such as the regional council, and associated issues of enforceability and cost recovery. For example, further clarity is considered around issues such as if the certifier seeks further information and the farmer chooses not to engage or provide the requested information. What happens in these circumstances? In addition, if a certifier's decision is not accepted by the farm operator, can the farm operator simply appoint another certifier, or would this trigger the dispute resolution process?

Submission Question 29: What are the likely impacts and cost implications of the preferred approach?

90. Environment Canterbury notes that the certifier acting as a farm plan advisor in addition to a certifier is likely to add complexity to the disputes process due to the breadth of the role of the certifier.

Submission Question 30: Do you agree with our preferred approach? If not, what is your preference?

91. Environment Canterbury agrees with the preferred approach, noting that this is appropriate if accreditation occurs nationally as per preference in Question 16.
92. We suggest that the national accreditation body could also run some form of national moderation process through randomly selecting a range of FW-FPs to gauge consistency in quality across certifiers. This could provide another element of robustness and confidence in the system.

Submission Question 31: What are the likely impacts and cost implications of the preferred approach?

93. Environment Canterbury notes that the certifier acting as a farm plan advisor in addition to a certifier is likely to add complexity to the complaints process due to the breadth of the role of the certifier.

Submission Question 32: Do you agree with our preferred approach? If not, what is your preference?

94. Environment Canterbury's response to questions contained in Section 3 of the discussion document included the need to clarify the regulatory role of the certifier and the relationship with the regulatory role of the regional council. This will inform the identification of the most appropriate body to resolve complaints and disciplinary matters for certifiers.
95. We recommend that a form of national or regional moderation be used where a sample of FW-FPs could be taken and assessed regularly to help provide a

benchmark of quality and consistency of certifiers. Regional councils do not have access to farm plans themselves so would be limited in their ability to raise concerns about a certifier's quality of work without such a mechanism.

Submission Question 33: What are the likely impacts and cost implications of the preferred approach?

96. We suggest that fees for becoming accredited could be used to fund the national accreditation service including the disputes resolution, complaints, and quality control aspects.

Submission Question 34: Do you agree with our preferred option? If not, what is your preference and why?

97. Environment Canterbury agrees with the preferred option, as we consider it may allow for efficiencies and integration with other auditing processes (e.g. industry requirements) on farm. However, we note in the discussion document that the role of the auditor involves providing advice on the timing and means that a farm operator can achieve compliance. Being able to provide advice on timing and how to meet compliance blurs the role of the auditor with that of the certifier. Our support of the preferred approach is on the assumption that the FW-FP process is "front end loaded" with the greater emphasis placed on the role of the certifier and the risk assessment/identification of actions.
98. It will be important that any advice provided by the auditor is consistent with the hierarchy of obligations as it applies in the catchment context and the regulatory role of the regional council to give effect to Te Mana o te Wai. If this is not possible, the ability to provide advice on timing and how to achieve compliance with a FW-FP could undermine catchment outcomes where the timing is inconsistent with the catchment context.

Submission Question 35: What are the likely impacts and cost implications of the preferred approach?

99. Provided the auditor role is focused on checking that actions have been undertaken as agreed with the certifier, then the use of auditors accredited by existing organisations should reduce costs. It could also provide opportunity for auditing of FW-FPs to be integrated with other audit processes taking place on farm.
100. Environment Canterbury seeks clarity on the scope for auditors to provide recommendations to a farmer on how compliance could be achieved beyond that identified by the certifier (see also Question 36). We consider this to have the potential to blur the roles of certifier and auditor and supports our preference for the role of the auditor to be subject to checks and balances to ensure robustness and transparency of the system.

Submission Question 36: Do you agree with our proposed approach for determining audit frequency? If not, what is your preference and why?

101. Environment Canterbury does not support the preferred option. We note that the proposed audit frequency equates in the order of 1-2 audits per certification cycle. This is potentially a significant cost to farm operators that are compliant. We consider the frequency of audits should be based on compliance performance rather than set intervals. This would better provide proportionality and an incentive for farm operators to invest in achieving compliance in support of freshwater outcomes than the costs of the audit process.
102. Our experience of FEPs in Canterbury is that the overall performance and effectiveness of on-farm actions are not able to be observed on the day(s) of the audit. To support compliance decision-making we consider that the robustness of the audit process would be improved by requiring evidence to be provided of the actions that have taken place on the farm over the relevant period. This could be assisted by the regulations stating that certifiers are to identify the information/evidence that farm operators will need to collect for the audit process.

Submission Question 37: What are the likely impacts and cost implications of the preferred approach?

103. We believe the preferred approach in the discussion document will be disproportionality costly for compliant and lower risk farms due to the high frequency (1-2 audits per certification cycle) of the audits. We suggest that a frequency that is based on performance would lead to audit costs more proportional to the risk posed.

Submission Question 38: Do you agree with our proposed approach? If not, what is your preference and why?

104. Environment Canterbury agrees with the proposed approach. We note that the preferred approach is that certifiers will be paid for by the farmer in their capacity as certifier and FW-FP advisor, and the role of the auditor may also involve providing advice to the farm operator on the timing and means of compliance. It is therefore appropriate that a farmer directly engages an auditor directly from an approved pool.
105. We support the need for quality assurance processes and professional standards to ensure that the risk of client capture as identified in the discussion document is managed. Adopting the user-pays principle, we consider one option for managing this risk could involve the regional council (or national body) administering the audit fees from the farm operator and the appointment of an auditor. While this would introduce a layer of administration it would also provide additional checks and balance into FW-FP system. Our accredited auditors are able to manage their engagement with farm operators through the systems and tools, training and guidance provided by the regional council. There may be some cost benefits and efficiencies to be gained by centralising these functions and systems, to provide better support for the auditors, including administration.

Submission Question 39: What are the likely impacts and cost implications of the preferred approach?

106. We consider the preferred option will minimise costs associated with auditing.

Submission Question 40: Do you think quality assurance should be undertaken by a national body, with checks undertaken regionally?

107. Environment Canterbury supports the proposal for quality assurance to be undertaken by a national body. We reiterate our support for quality assurance to be undertaken alongside robust accreditation processes to ensure professional standards are maintained and to provide confidence in the system.
108. We agree with the proposed approach to quality assurance of FW-FPs whereby they would be administered and coordinated nationally with checks undertaken by regionally based assessors. This has the benefit of ensuring consistency across the country while recognising the need for regional context and knowledge.
109. We also support regional councils having discretion to trigger the quality assurance process such as in the event they identify concerns relating to FW-FPs. We recognise there is further work to do to develop the details of this process and we are willing continue to engage with MfE and MPI on this.

Submission Question 41: What should the triggers be for quality assurance checks?

110. Triggers should be linked into the disputes resolution and complaints process. In our responses to Questions 28 and 30 we suggested a moderation system could be used to check a randomly selected sample of FW-FPs for consistency regionally and nationally. We note that a random selection could enable FW-FPs from across the quality spectrum to be considered, including checking that those considered of high quality and compliance are. Regional councils should also be able to raise concerns regarding quality across their regions.

Submission Question 42: What are the likely impacts and cost implications of the proposed approach?

111. We note that there is limited detail provided regarding the detail of how any national body would be funded, what governance structures would be in place, how it perform its duties, how it would relate to a national accreditation body. We consider that the role of these national bodies (both quality assurance and accreditation) to be crucial for ensuring that the FW-FP system is robust and well supported. There are opportunities for users of the FW-FP system to help fund these national bodies which should be explored in the next stages of this work.

Submission Question 43: Are the proposed offences and infringement fees appropriate? If not, what would be appropriate?

112. Environment Canterbury considers the infringement penalties are appropriate to the proposed offences. We also note the general position in the RMA that allows regional councils the discretion whether or not to impose an infringement fee for non-compliance is proposed. This will allow for individual circumstances including capacity limitations with respect to the specified timeframes for compliance and is supported.
113. We reiterate our concerns that the freshwater farm system will need to be robust and transparent for the FW-FP system to be effective in our region, particularly where significant investment is required on farm to meet the new freshwater outcomes identified through the NPSFM 2020. In these circumstances, Environment Canterbury considers the national accreditation system and the professional standards of the certifier and auditor will aid in the robustness of the enforcement mechanism.

Submission Question 44: Do you agree with our preferred option? If not, what is your preference and why?

114. We agree a phased or staged approach to the requirement for a FW-FP to be prepared is appropriate and recognises in the short term there is likely to be capacity limitations in the rural sector and regional councils. We also recognise the rationale provided for the catchment-by-catchment approach.
115. However, the existing FEP system in Canterbury has been effective for farms to operate at good management practice and is focussed on those farms that have the greatest risk to the freshwater environment. We consider the good progress that has been made to-date by farms operating under the FEP system should be recognised and stand in place of a FW-FP in the short term (until a new freshwater regional plan becomes operative or until a new farming land use consent is required).
116. This approach recognises the considerable time and cost the farming community has already invested to improved environmental outcomes and will enable the catchment context to be more fully developed in order to better support any further actions needing to be taken by these farms to meet the new freshwater outcomes identified through the NPSFM 2020. This transition approach would also enable us to focus on those farms where there has been limited engagement with the regional council to-date and provide the necessary information and support to promote compliance with the regulations.
117. This transition approach would also avoid the unintended consequence that farm operators may require resource consent pursuant to the NES-F due to being a lower priority in the staged or phased roll-out of FW-FPs (and then needing to prepare a FW-FP at a later point in time). We would welcome the opportunity to continue to work with the Ministry for the Environment and the Ministry for Primary Industries to address any specific concerns such as ensuring the content of FEPs incorporate any specific matters consider necessary to enable them to stand in place for a FW-FP during the transition period.

118. In view that these considerations may be different in other regions, particularly those with existing FEP systems, we consider the phasing and staging of FW-FPs is most appropriately identified by each regional council. We propose that a third option be considered whereby regions have the option of seeking agreement from the Minister for the Environment to implement a bespoke approach that meets their specific regional circumstances.

119. We note that Question 5 of the discussion document considers the appropriate content of FW-FPs during the transition period and is a related consideration.

Submission Question 45: Should we explore whether it should be possible for farmers and growers to opt into the FW-FP system?

120. Where FW-FP regulations interact with other regulations, e.g. the National Environment Standards for Freshwater (NES-F). In particular, some activities (e.g. intensive winter grazing, and the use of some stockholding areas) are capable of being a permitted activity under the NES-F where a farmer has obtained a certified farm plan. The implementation approach should consider issues of fairness for farmers who are able to obtain a certified FW-FP early on that negates the need to also obtain resource consent, and those farmers who are required to obtain resource consent in the absence of being able to obtain a certified FW-FP certified. Opting into the FW-FP may provide a mechanism for addressing this.

Submission Question 46: What are the likely impacts and cost implications of the preferred approach?

121. We have concerns that if the progress already made by our farmers covered by our existing FEP programme is not recognised, they could face disproportionately large costs to adapt to the new FW-FP system. We also recognise that Canterbury farmers are actively engaged with the FEP system in place and that requiring these plans to be re-worked to fit the FW-FP system risks disengaging farmers who are already working to improve water quality.

Submission Question 47: Should we consider any other ways to support farmers, growers and certifiers to understand and incorporate catchment values and context?

122. Environment Canterbury agree this approach will assist with understanding catchment values and context alongside the community engagement that will form part of other regional council planning processes.

Submission Question 48: What are your thoughts on the proposed indicator areas for evaluating the difference the freshwater farm planning system is making to water quality and ecosystem health?

123. Environment Canterbury considers the proposed indicator areas for evaluating the difference the freshwater farm planning system is making to water quality and ecosystem health needs to be based on sound principles to ensure the

indicators that are reported align to the catchment context and reflect the freshwater outcomes and priorities relevant to the farm. Indicators should also not be burdensome to measure and report on for either farmers or councils.

124. Aligning information requirements for national environmental reporting is generally supported however we do not consider centralising existing systems, tools and data will always be the most appropriate approach. Local authorities throughout New Zealand use a range of different systems, tools and technologies to support delivery of council functions. Decisions on what, and how much to invest, in digital solutions have historically been made taking into account the individual impacts for a local authority (e.g. ratepayer base, cost, integration with other systems, required functionality, and relative significance of the issue).
125. Experiences across other government sectors² has shown the anticipated benefits of centralisation (e.g. reduced costs, improved efficiency) are not always realised. These challenges are even greater when considering the nature, diversity and complexity of issues faced by local government.

Submission Question 49: What other information should we consider, and why?

126. Environment Canterbury considers local authorities are best placed to understand issues facing regions and districts, and the types of tools and systems required in response. Many are at the leading edge of developing innovative tools and solutions to local problems. Environment Canterbury's Water Data project is one example of a system that will improve the Council's understanding and which will be used to inform future management responses for freshwater resources.
127. Environment Canterbury would welcome the opportunity to continue to work with the Ministry for the Environment and the Ministry for Primary Industries to further investigate the most appropriate information to collect from FW-FPs for environmental reporting and for compliance, monitoring and enforcement purposes.

Submission Question 50: What are the likely impacts and cost implications of this approach?

128. We consider the costs of this approach to be acceptable.

Submission Question 51: Do you agree with our preferred approach? If not, what is your preference and why?

129. Environment Canterbury does not consider that the privacy of farm operators can be fully protected by aggregating data.

² E.g. The proposal to centralise payroll systems for teachers through NovaPay.

Submission Question 52: Is there any information in a FW-FP that you would not want to be shared publicly? For what reason?

130. No information not specifically required to understand and evaluate the FW-FP system and its effectiveness should be captured. No private details or commercially sensitive information should be collected.

Specific questions from the Freshwater farm plan regulations: initial regulatory impact analysis of the proposed options

Questions

a) Do you agree with our impact and benefit assumptions? If not, what is incorrect

b) What other information should we consider, and why?

131. Environment Canterbury agrees with the assumption that farm operators who are not currently engaged in farm planning activities are likely to find aspects of the freshwater farm planning system challenging, in particular for those aspects of regulated outcomes involving recognition of tangata whenua values. The FEP system in Canterbury operates within the consenting framework and the requirement for a FEP relates to higher risk farming activities such as intensive winter grazing or irrigation thresholds. Farming activities that can take place as a permitted activity are thus considered to be lower risk farms. In these situations, we agree with the assumption that farm operators are likely to be able to meet FW-FP requirements by expanding the scope of their current farm planning activities.
132. However, Environment Canterbury does not agree that the assumption most farm operators will be able to meet FW-FP requirements by expanding the scope of their current farm planning activities will necessarily apply in all situations. Our experience is the FEP system in Canterbury is that it has been an effective tool for building community acceptance of and the need for operating at Good Management Practice (GMP). If the intent of the FW-FP system is to get all farms to GMP we consider this could be achieved through existing freshwater management tools. Establishing new national certification and auditing processes and building new capability and capacity of key roles in the new system will add to existing administration with potential high costs to farm operators and to regional councils shifting to the new system.
133. We note that climate change adaptation has not been included in the FW-FP discussion document. Climate change brings with it an increase in heavy rainfall and flooding, droughts, increased fire risk, increased air and water temperatures, and high winds. These factors will affect our farmers more as climate change intensifies.

134. Our farmers need a mechanism in their farm plans that enables them to plan in measures for adaptation to climate change – farm resilience. FW-FP guidance could require farm plans to include climate change predictions for the region the farm is in, ask that the farm plan describes how these predictions will affect their farm, and shows how farm plans will deal with them. FW-FP guidance can also flag current farm practices that are at a high risk of being maladaptive to climate change, in the sense that they decrease farm resilience in the face of climate change.
135. We acknowledge MfE's direction during the webinars held during the consultation period that strong direction to drive change will need to come from the regional plan and other methods giving effect to the NPS-FM 2020, rather than the FW-FP itself.
136. Environment Canterbury considers further clarity is required on how the FW-FP system will integrate with regional planning system and other methods of driving improvement. We welcome the opportunity to work with the Ministry for the Environment and the Ministry for Primary Industries to share our experience to help refine the FW-FP system.