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Submission to the Environment Committee on the Resource Management (Consenting and Other System Changes) Amendment Bill

Introduction

DairyNZ welcomes the opportunity to submit to the Environment Committee on the Resource Management (Consenting and Other System Changes) Amendment Bill ('the Bill').

DairyNZ is the industry good organisation that represents all New Zealand dairy farmers. DairyNZ is focused on helping farmers build profitable, sustainable, and resilient farm businesses through extension, advocacy, science and research. Our purpose is to progress a positive future for New Zealand dairy farming.

DairyNZ is funded by a levy on milksolids that is paid by all dairy farmers under the Commodity Levies Act 1990, a significant proportion of our work is allocated towards research and development in delivering water quality outcomes. DairyNZ continues to invest in science and research to help our farmers improve environmental outcomes – and so communities can continue to thrive. We remain committed to helping improve water quality outcomes across all dairy catchments, building off the great work farmers have already undertaken.

General comments

DairyNZ supports the Bill's intent, especially its focus on efficient processes and addressing practical challenges for resource users.

At this stage it is unclear how the Bill's amendments will align with phase 3 of the government's resource management reform or the national direction changes planned for 2025. These changes might address some concerns raised in this submission. Assuming many amendments will carry into phase 3, we have targeted our submission accordingly.

Summary of submissions

DairyNZ recommends the Bill proceeds, with minor amendments, outlined below.

Expanded Ministerial powers

- DairyNZ opposes excessive changes to s 25A, given existing ministerial powers in relation to regional council functions. DairyNZ recommends deletion of proposed s 25A(3) to prevent Ministerial overreach and amendments to s 25A(4) to limit intervention to cases of significant non-compliance with national policy statements.

Broadening of powers to charge for costs associated with monitoring

- DairyNZ seeks deletion of s 36(1)(caaa) which proposes to allow regional the ability to charge for monitoring of permitted activities. This monitoring is part of regional councils' general functions and the proposals would lead to a lack of accountability, and disadvantage those who live in remote areas.
- We agree councils should be empowered to charge for contravention of regulations under s 36(1)(caab), although we submit this should be amended to limit cost recovery to those associated with monitoring and only where there has been a contravention.

Permitted activities in overallocated catchments

- We support the proposal to amend s 70, enabling for a regional council to provide for discharges to water as a permitted activity provided the rule will include standards that contribute to a reduction in effects.
- However, we seek further amendments to ensure this approach is applied to other effects, including those related to suspended materials and changes in colour or visual clarity.

Consent information and the requirements to hold hearings

- We ask s 88 is amended to require a consent authority to accept resource consent applications if the information provided matches the activity's scale and impact. This will streamline processes and reduce costs for applicants.
- We support amendments to s 92, which sets out criteria a consent authority must consider before requesting further information. This is a practical change reducing cost and confusion.
- We support proposed amendments to s 100 for similar reasons. However, we seek a consequential amendment to s 357A to ensure there remains a right of objection should parties not agree a consent authority has sufficient or accurate information.

Ability to consider previous non-compliance and decline a consent for previous non-compliance

- We support amendments to s 104 which would allow a consent authority to take into account specified types of non-compliance when considering a consent application. This amendment is preferred as an alternative to other additional deterrents proposed in the Bill.
- We also support amendments to s 108 which would allow a consent applicant to demonstrate how they will mitigate the risks considered under the proposed amendments to s 104. This will allow a consent applicant to demonstrate lessons learned from previous non-compliance and adapt accordingly.

Introducing the ability for a consent authority to refuse consent or include conditions, based on assessment of risk from natural hazards

- We support in principle the aims of proposed new s 106A which seeks to grant powers to a consent authority to refuse consent or require conditions based on natural hazard risk.
- We seek amendments to ensure the assessment of risk is focused on the safety or health of people and to ensure there is greater clarity around how exacerbation of risk will be considered.

Applicant may request the consent authority to provide any draft conditions of the consent

- We support new s 107G which will provide for discussions between a consent authority and a consent applicant on draft consent conditions.
- We seek deletion of proposed s 107G(4) so that applicants and submitters can provide comment on all matters, not just technical or minor ones.

Default period of 35 years for the duration of a resource consent for renewable energy and long-lived infrastructure

- We support the introduction of s 123B. Longer term consents for these activities will increase the 'bankability' of the significant investment required for these activities.
- We seek amendment of the proposed definition of long-lived infrastructure to include an appropriate definition of 'large scale irrigation infrastructure'. Large scale irrigation provides significant benefit and requires the same degree of certainty and bankability as the other infrastructure listed.

Criteria for calling in consents

- We do not support proposed s 128(1)(aa) and seek this is deleted, or amended to ensure consents are only called in where significant or repeated breaches have occurred.
- Providing a consent authority with the ability to review a consent for contravention of any condition of a consent is an extremely low bar, undermining certainty. Amendments to s 104 and existing compliance tools are a preferred alternative.

Farm plans

- We support the proposed amendments in relation to Freshwater Farm Plans, and seek adoption of amendments to ss 217B, 217H, 217KA and 217M as proposed.
- We seek a consequential amendment to s 217K to ensure an organisation approved by the Minister is also appointed by a regional council.
- We ask s 217I(2)(b) is amended to ensure that information provided to a council is handled and stored in a way that respects commercial sensitivities.
- We support additional changes to Part 9A, through new ss 217LA and 217LB, as proposed by Fonterra to ensure there is not unnecessary duplication of regulation.

Powers for Environment Court to revoke or suspend a resource consent

- We support in part proposed s 314A which would allow a local authority or the EPA to apply to the Environment Court to revoke or suspend a resource consent.
- However, we seek amendments to ensure the application for revocation or suspension considers s 5 of the Act, and to ensure the consent holder's rights under s 124 are not inappropriately restricted.

Scope of abatement notice

- We support the intent to add compliance with a national environmental standard to the criteria for issuing an abatement notice.

- This should be achieved through a minor change to the existing wording of s 322(1)(b) to include a 'national environmental standard,' instead of the changes proposed through Clause 60.
- Clause 60 proposes to remove the need for compliance officers to consider whether an action is necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment when considering whether to issue an abatement notice. This requirement should remain in s 322(1)(b).

Increase in maximum fines and inability to insure

- We support retaining the current maximum level of fines under s339(1). RMA offences can be strict liability, with no need to prove intent, recklessness, or negligence. On-farm breaches are often accidental and caused by factors beyond farmers' control, weakening the deterrent effect of fines.
- We oppose new s 342A which makes unlawful certain contracts of insurance against fines or infringement fees. The ability to insure is important where an offence is caused by matters outside of a farmers' control.
- If s 342A is retained, then subsection (3) should also state that the prohibition against insurance does not apply to expert fees and court costs.

Submissions

Proposed amendment	DairyNZ submission
Clause 6 inserts new section 25A(3), which provides that if a national policy statement requires a local authority to prepare a document other than a plan or policy statement, the Minister may direct a local authority to prepare or amend the document to meet the requirements of the national policy statement. Clause 7 inserts new section 25A(4), which enables the Minister to direct a local authority to— • prepare and make a plan change or variation to address any non-compliance with a national policy statement; and	**DairyNZ opposes the amendments in part** DairyNZ supports efforts to streamline processes and align national and regional directions. However, we find some proposed changes to section 25A excessive. In our view the Act, particularly Part 4, already provides the Minister with sufficient tools to direct and guide regional councils, to hold them to account, and to ensure there is a degree of transparency and accountability between the regional council and their regions. While efficient regulation is important, maintaining subsidiarity and accountability is fundamental. The Minister's existing powers to direct plans are adequate. We oppose broadening these powers to include directing 'documents'.[1] and recommend removing proposed section 25A(3). Proposed section 25A(4) would allow the Minister to order plan changes for non-compliance with national policy statements and specify the planning process to be used. Given the other powers provided through 25A we believe this amendment should be restricted to national policy statements only, and should only apply to cases of significant non-compliance with a national policy statement. **Relief sought:** • **Delete proposed section 25A(3).** • **Amend proposed section 25A(4) as follows:** *(4) The Minister—* *(a) may direct a local authority to—*

[1] We assume the definition of 'document' is intended to capture the information listed at s2AC of the Act.

• use a planning process under the principal Act specified by the Minister for that purpose.	*(i) prepare a plan change or variation to address ~~any~~ <u>significant</u> non-compliance with a national policy statement; and* *(ii) use a planning process under this Act to prepare the plan change or variation; and* *(b) must specify in the direction a reasonable period within which the plan change or variation must be notified.*
Clause 10 – amendments to s36 to allow councils to charge fees for monitoring permitted activities	**DairyNZ opposes the amendments in part** Clause 10 seeks to broaden the charges a local authority can set under s36 of the Act, including provision to charge for • monitoring of permitted activities. • actions related to enforcement. • where a council determines a consent holder has contravened a condition of the consent. • reviews carried out in accordance with a relevant national environmental standard or national planning standard. DairyNZ supports councils recovering costs for individual actions when the process is equitable and efficient. However, we are concerned that charges for permitted activities fail to meet these criteria. Permitted activities are intended to have a low environmental impact, and monitoring compliance with these standards should fall under a regional council's general functions. Charging for travel and staff time to monitor compliance is particularly unfair for remote farms, especially when farmers meet permitted activity standards. Monitoring can often be done through email or by requesting evidence of compliance. Freshwater Farm Plans will further ensure appropriate practices are in place to manage risks and meet standards. Section 36(3) of the Resource Management Act outlines criteria for fixing charges, but these criteria are too broad to ensure fairness. Section 83 of the Local Government Act 2002 requires community consultation, but limited engagement and a preference for rate reductions may not adequately protect against inequities. Similarly, section 36AA provides criteria for charging but lacks clarity for fair cost recovery specific to permitted activities. For example, it does not clarify how councils will distinguish between the benefits of meeting permitted activity standards for the individual versus the wider community, raising concerns about inequitable charges for monitoring costs.

	The following points are also relevant: • The Act provides mechanisms for cost recovery for consented activities, or those deemed relatively higher risk. • An NES may empower local authorities to charge for monitoring of permitted activities under s43A(8). • Proposed ss 36(1)(caab) and 36(1)(caac) provide for charging where there has been a demonstrated lack of compliance. • Because of the capital or land value base for most council rates revenue, farmers already pay significantly higher rates than most. • At a practical level, there are thousands of permitted activities occurring in every region every day. These changes would give councils the ability to monitor an infinite number of activities as regularly as the council pleases, and to charge for that monitoring. This lacks accountability. We propose removing the ability to charge for permitted activities under proposed s36(1)(caaa). We seek amendments to proposed s36(1)(caab), as empowering an enforcement officer to charge for costs where that individual enforcement officer considers there has been a contravention too broad, given the remainder of the rule provides for charging where there is contravention with a specific rule. In addition, the types of costs that are proposed to be recoverable are too broad and should be limited to monitoring costs. They should not for example include legal or expert advice that a local authority might obtain in forming its view on whether or not there has been a contravention. **Relief sought:** • **Delete proposed section 36(1)(caaa) relating to permitted activities.** • **Amend proposed section s36(1)(caab) as follows:** *(caab) charges payable by a person who ~~an enforcement officer considers~~ has contravened this Act, a national environmental standard, a regulation, a rule in a plan, or a resource consent, for the carrying out by the local authority of monitoring ~~any function necessary~~ to determine whether the contravention has occurred:*
Clause 15 – amendments to s70 to enable regional councils to include permitted activity discharge rules where standards will contribute to a reduction in adverse effects over time.	**DairyNZ supports the amendments in part** Section 70 of the RMA restricts the ability of a regional council to make a permitted activity rule in a plan for discharges to water, or to land where the discharge may enter water, if the discharge/s will lead, "after reasonable mixing", to the following effects in the "receiving waters": a. The production of conspicuous oil, grease films, scums or foams, or floatable or suspended materials. b. A conspicuous change in colour or visual clarity. c. Objectional odours. d. Freshwater being unsuitable for consumption by farm animals.

	e. Significant adverse effects on aquatic life[2]. Most parties have until recently interpreted this section as applying only to point source discharges. In the Environment Court decision (*Aratiatia Livestock Limited v Southland Regional Council*) the Environment Court held: 1. Where attributes of water bodies are below a national bottom line or minimum acceptable state in the National Policy Statement for Freshwater Management 2020 (NPSFM) then discharges would be "highly likely" to have significant adverse effects on aquatic life. 2. Section 70 applies beyond point source discharges to diffuse discharges of contaminants, such as those from pastoral farming activities. 3. This means that a permitted activity rule for discharges from pastoral farms in Southland would be unlawful and all farmers would require a resource consent to farm. The implication of this decision is that where waterways have one or more attributes below national bottom lines or minimum acceptable states in the NPS-FM a proposed regional plan cannot authorise a diffuse or point source discharge as a permitted activity. DairyNZ considers section 70 outdated. It has been superseded by the state of freshwater environments in New Zealand, which are now more degraded than when s 70 was originally enacted. It has also been superseded by the clear change in policy, which is designed to respond to the degrading state of freshwater environments. For lower risk farming activities, that approach is to rely on a system of permitted activities supported by robust freshwater farm plans. It is important to note that: • The implications of the decision on s70 apply to all land uses where there is a discharge to water, or to land where the discharge may enter water, to a waterway where one or more attribute is below a national bottom line, including urban discharges. • The decision relates to individual waterways where one or more attribute is below a national bottom line, not catchments or sub-catchments. This will have wide implications for the drafting of rules in freshwater regional plan changes to implement the NPSFM (either the current version or a future version).

[2] See s 70(1)(c) - (g).

	The amendments proposed in the Bill aim to address only significant harm to aquatic life but overlook other effects in Section 70, such as: • Visible oil, grease, scum, or foam. • Changes in water colour or clarity. • Objectionable odours. • Water unsuitable for consumption by livestock. Despite the changes proposed, the bar to provide for permitted activities in waterways below bottom lines would remain too high, making it nearly impossible for councils to develop workable permitted activities given the regional council must be satisfied that <u>none</u> of these effects will occur (after reasonable mixing) in <u>any waterway</u> which has one or more attributes below national bottom lines or minimum acceptable states. Given the above, DairyNZ considers it is very unlikely a regional council can be satisfied these other effects will not occur in all waterways across the life of a proposed plan. Therefore, the ability to provide for a permitted activity will be extremely limited. Section 70 undermines the Government's stated intention of relying on a system of permitted activities and freshwater farm plans for lower risk farming activities. DairyNZ suggests the following wording as an alternative. The amendments seek to broaden the criteria to provide for permitted activities only to include suspended materials, conspicuous change in the colour or visual clarity or any significant adverse effects on aquatic life. The remaining criteria ensure the effects of any permitted activities will be appropriately managed. **Relief sought:** • **S70 is amended as follows** **70 Rules about discharges** *(1) <u>Except as provided in subsection 1A, before</u> ~~Before~~ a regional council includes in a regional plan a rule that allows as a permitted activity—* (a) *a discharge of a contaminant or water into water; or* (b) *a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water,—*

	the regional council shall be satisfied that none of the following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar, or other contaminants): (c) *the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials:* (d) *any conspicuous change in the colour or visual clarity:* (e) *any emission of objectionable odour:* (f) *the rendering of fresh water unsuitable for consumption by farm animals:* (g) *any significant adverse effects on aquatic life.* *(1A) A regional council may include a rule in a regional plan described in subsection (1)(a) or (1)(b) without complying with subsections (1)(c) in relation to suspended materials, (1)(d), (1)(f) or 1(g) if:* *(a) on the date the proposed rule is notified, the effects described in subsections (1)(c) in relation to suspended materials, (1)(d), (1)(f) or (1)(g) were already occurring or likely to arise in the receiving waters after reasonable mixing; and* *(b) the proposed rule includes requirements, conditions, or permissions designed to achieve a reduction in the effects described in subsections (1)(c) in relation to suspended materials, (1)(d), (1)(f) or (1)(g).* *(2) Before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant, the regional council shall be satisfied that, having regard to—* *(a) the nature of the discharge and the receiving environment; and* *(b) other alternatives, including a rule requiring the observance of minimum standards of quality of the environment, —* *the inclusion of that rule in the plan is the most efficient and effective means of preventing or minimising those adverse effects on the environment.*
Clause 28 – amends s88, relating to the information provided by a consent applicant. Clause 30 – amends s92 providing criteria that a consent authority must consider before requesting further information.	**DairyNZ supports the amendments in part** The proposed intention of section 88(2AA) requiring applicants to provide information proportionate to the nature and significance of their activity is supported. However, this clause should go further to require consent authorities to accept applications if the level of information provided by an applicant is proportionate to the nature and scale of the activity. Section 88(2AB) gives consent authorities more flexibility to determine whether further information is required if the authority is satisfied that the information provided by the applicant is proportionate to the nature and significance of the activity.

Clause 34 replaces section 100 to provide that a consent authority must not hold a hearing if it determines that it has sufficient information to decide the application, and provides some parameters for making that determination.	The proposed changes to section 92 appropriately shift the responsibility for deciding if further information is needed onto the consent authority. The proposed amendments to s 100 will in some instances reduce the extent that interested parties can be involved in a consent process. While this will provide for a more efficient process, there remains a risk that a consent authority will not have sufficient or accurate information and not be aware of this. This concern could be addressed through an amendment to s357A, Right of objection to consent authority against certain decisions or requirements. We have proposed wording to this end below. We support the responsibility for deciding whether sufficient information has been provided sitting with the consent authority. Together, these amendments create a more flexible and efficient system by assigning responsibility to the appropriate party at key stages of the process. **Relief sought:** • **S88 is amended to include the following**: *"(2AA) A consent authority must accept an application for resource consent if the information is provided at a level of detail that is proportionate to the nature and significance of the activity"* • **Amendments to ss 92 and 100 are adopted as proposed.** • **A consequential amendment to s357A(1) is made** (*1) There is a right of objection to a consent authority,—* *...(b) section 100 (which relates to the holding a hearing)*
Clause 36 amends section 104, allowing a consent authority to take into account specified types of previous non-compliance with requirements and to decline an application on the basis of a specified degree of non-compliance.	**DairyNZ supports the proposed amendments** The proposed amendments aim to allow consent authorities to consider past non-compliance and decline resource consent applications if there is ongoing, significant, or repeated non-compliance tied to an enforcement order or conviction under the Act.

Clause 39 amends section 108, which relates to conditions of resource consent, to allow conditions to be included to mitigate risks of non-compliance.	DairyNZ supports focusing on individual behaviour and compliance history when assessing consent applications. This approach is a better alternative to introducing unnecessarily strict regulations that penalize all resource users, regardless of their compliance track record. We believe past non-compliance provides a more precise and targeted reflection of a resource user's history compared to the measures proposed in clauses 65 and 66, which increase fines and prohibit insurance against fines or infringement fees under the RMA. Non-compliance on farms often occurs unintentionally, despite the farmer's efforts. The changes to sections 104 and 108 offer a more targeted and effective response to non-compliance while also serving as a better deterrent. Our support for these amendments is closely tied to the proposed addition of s108(2)(da). It is crucial that consent applicants are given the opportunity to demonstrate how they will mitigate risks associated with previous non-compliance. This is especially important for farming consents, as they are often essential to the viability of the farming operation. In many cases, a declined consent could make a farm unviable. **Relief sought** • **Amendments to ss 104 and 108 are adopted as proposed.**
Clause 37 - inserts new section 106A, allowing a consent authority to refuse consent or grant it subject to conditions, based on assessment of risk from natural hazards.	**DairyNZ supports the amendments in part** It is reasonable for consent authorities to consider the risk of natural hazards on the safety or health of people, where that land use may significantly impact other land uses, or where a land use is planned in a clearly defined natural hazard area where there is a high degree of confidence that land use is incompatible, or where there is a significant threat to the safety and wellbeing of people. However, we have concerns that: • The definition of 'natural hazard' in the Act is broad. • The amendments may capture a range of activities beyond those that will impact on the safety or health of people. The definition of natural hazard in the Act captures a range of risks without reflecting an appropriate degree of significance (emphasis ours):

	*natural hazard means **any** atmospheric **or earth or water related occurrence** (including earthquake, tsunami, **erosion,** volcanic and geothermal activity, **landslip, subsidence, sedimentation, wind, drought, fire, or flooding**) the action of which adversely affects or may adversely affect human life, **property, or other aspects of the environment*** Under this definition several activities, including but not restricted to dairy farming, could meet the criteria if applied strictly. For example, the building of a new dairy shed or other structure on farm may result in a minor exacerbation of water movement in a high rain event, leading to subsidence or sedimentation, or marginally increased flooding. It is important there is a focus on both relevant activities, there is an appropriate degree of significance within the legislation, and that the priority focus is on the safety or health of people. We seek amendments to reflect this and ensure a degree of practicality is applied. **Relief sought:** • **Amend proposed s106A as follows:** ***106A Consent authority may refuse land use consent in certain circumstances*** *(1) A consent authority may refuse to grant a land use consent, or may grant the consent subject to conditions, if it considers that the activity for which consent is sought will—* *(a) create a significant risk from natural hazards if there is no existing risk from natural hazards; or* *(b) increase an existing risk from natural hazards to a significant risk; or* *(c) increase an existing significant risk from natural hazards.* *(2) For the purposes of 1), an assessment of the risk from natural subsection hazards requires a combined assessment of—* *(a) the likelihood of natural hazards occurring (whether individually or in combination); and* *(b) the level of risk posed to the safety or health of people ~~material damage to land in respect of which~~ as a direct result of the land use provided for under the consent ~~is sought, other land, or structures that would result from natural hazards~~; and* *(c) whether the proposed use of the land would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b); and* *~~(d) whether the proposed use of the land would result in adverse effects on the safety or health of people.~~* *(3) Conditions imposed under subsection (1) must be—* *(a) for the purposes of avoiding or mitigating the effects of any significant risk from natural hazards; and* *(b) of a type that could be imposed under section 108.*
	DairyNZ supports the amendments in part

Clause 38 - new section 107G, which allows an applicant to request the consent authority to provide any draft conditions of the consent.	The proposed amendment will allow applicants and the consent authority to discuss specific conditions. This will be more efficient and effective in many instances. This addition is particularly important given the amendments to section 108 proposed in clause 39, in that any proposed measures aimed at mitigating future risks of non-compliance can be subject to conversation. We seek deletion of proposed s107G(4). An applicant or submitter may have important comments on conditions that should be taken into account and these may extend beyond technical or minor matters. **Relief sought:** • **New s107G is amended as follows** *107G Review of draft conditions of consent* *...(4) ~~A consent authority may take those comments into account only to the extent they cover technical or minor matters.~~* *~~(5)~~ A consent authority may provide draft conditions to the persons specified in subsection (2)(b) or (c) more than once.*
Clause 42 inserts new section 123B, which provides for a default period of 35 years for the duration of a resource consent for renewable energy and long-lived infrastructure and sets out how that period may be altered.	**DairyNZ supports the amendments in part** We support the introduction of a default period of 35 years for renewable energy and long-lived infrastructure. Longer duration consents will provide the certainty needed to secure and justify significant investment in these assets. To that end we seek the addition of 'large scale irrigation infrastructure' to the proposed definition of long-lived infrastructure. This will ensure that the default periods are available for large scale irrigation infrastructure, to also ensure investment surety. Investment in large scale irrigation infrastructure involves significant up front capital investment. This means investment in irrigation infrastructure is generally made with a 30 to 50 year horizon in mind. Providing for a default term of 35 years will provide much needed investment surety and make borrowing more accessible. Large scale irrigation schemes would remain subject to environmental limits, standards and regulations, including for both water takes and discharges. If large scale irrigation infrastructure is not included within the definition of long-lived infrastructure, then the suite of new provisions supporting long-lived infrastructure will deprioritise agriculture's allocation of water resources due to the

	duration of those resource consents and the priority with which applications for long-lived infrastructure are proposed to be treated. **Relief sought:** • **Adopt new section 123B as proposed.** • **Amend the proposed definition of long-lived infrastructure to include an appropriate definition of 'large scale irrigation infrastructure'.**
Clause 45 amends section 128, which sets out when a consent authority may review the conditions of a resource consent, to include when a consent authority determines that the holder of the consent has contravened a condition of the consent.	**DairyNZ opposes the amendment** Clause 45 suggests allowing consent conditions to be reviewed if the consent holder has breached a condition of that consent. DairyNZ believes this sets too low a threshold, as one off, minor breaches could lead to a full review, which would be inefficient and unfair. The need for this amendment should be considered along with other, related amendments. For example, Clause 59 introduces s314A, enabling consent revocation or suspension for ongoing, significant, or repeated non-compliance. While s314A deals with revocation or suspension whereas the proposed amendment to s128 deals with a review of conditions, DairyNZ prefers this level of threshold for addressing serious breaches particularly as, in some instances, a review of consent conditions may result in similar impacts on the consent holder as revocation or suspension of a resource consent. Additionally, other amendments (Clauses 36 and 39) ensure a history of non-compliance is considered for new consent applications, and breaches of a consent condition can result in specific compliance or enforcement action. Together, these measures are adequate to manage the potential adverse effects of breaches in a consent condition without the need for the amendments proposed to s128, especially since minor breaches are often unintentional and quickly addressed. As a whole, the package of amendments proposed to increase the deterrent effect of not meeting consent conditions without the need for the proposed amendment to s128. DairyNZ prefers deleting proposed s128(1)(aa). If retained, it should be revised to limit reviews to ongoing, significant, or repeated non-compliance breaches only. **Relief sought:** • **Proposed s128(1)(aa) is deleted, or** • **Amend proposed s128(1)(aa) as follows:**

	(aa) if the consent authority determines that the holder of the consent has repeatedly contravened a condition of the consent, or more than one conditions of the same consent, and these contraventions have resulted in significant adverse effects on the environment; or
Clauses 54 to 58 - Proposed amendments to Part 9A relating to Freshwater Farm Plans (FWFP).	**DairyNZ supports the amendments in part** DairyNZ supports the proposed amendments, which aim to allow industry approved organisations (IAO) to act as certifiers and auditors and provide a greater role for the Minister in approving these organisations. Currently, over 80% of dairy farmers (10,600) have farm environment plans addressing water quality, greenhouse gases, and biodiversity. These plans, led by the industry, show the sector's commitment to better environmental outcomes. These existing efforts show both the sector's commitment to deliver better environmental outcomes and that the sector is well positioned to deliver robust, practical plans. A key concern with current FWFP regulations is the lack of a clear transition from existing industry-led plans to FWFP as a regulatory tool. While councils can approve industry organisations, requiring approval in multiple regions is costly and discourages participation. Current regulations also do not allow approved organisations to appoint certifiers or auditors under set criteria. This Bill would address these issues. Robust FWFP regulations are crucial for them to serve as a strong alternative to consents, other regulations, or standards. DairyNZ supports strict criteria for Ministerial approval and checks to revoke approvals if standards are not met. The dairy industry is highly motivated to make FWFP successful as an efficient and targeted regulatory alternative. Going forward there is increased likelihood farm plans will be used as a quality assurance tool for overseas markets. It is important regulatory farm plans and market driven plans are integrated to avoid duplication, unnecessary costs for farmers, and conflicting signals to markets. Regional plans significantly influence whether the delivery of FWFP is feasible for an IAO. When regulations and FWFP expectations and content requirements are similar across all regions, delivery of FWFP certification and auditing across multiple regions is far easier. Regional plans need to be developed in a way that seeks to deliver on the intent to make better use of approved industry FWFP. This alignment should be considered both when refining FWFP regulations and reviewing the NPS Freshwater Management. Data availability, storage and reporting are also important factors for dairy companies and their relationship with their suppliers.

	We recognise regional councils need to have a high degree of confidence in the system processes, checks and balances for FWFP to play an appropriate role in regulation. To that end we support the proposals allowing regional councils to raise any significant or persistent concerns with an IAO's operations within their regions. We support the proposed amendments to s217H as these will provide necessary flexibility to IAO with other mechanisms, including the IAO approval and monitoring processes, ensuring the system remains robust. We seek an additional amendment to s217K to ensure a regional council will appoint an IAO approved by the Minister, delivering on the intent of the package of amendments. We seek additional amendments to Part 9A to resolve the potential for regulatory overlap. Our concern is that, rather than being used as an effective, efficient and optimal regulatory alternative to less targeted regulations, farmers may face FWFP and additional consenting requirements or standards. This would not be making best use of FWFP and would create unnecessary cost. As a result, we support additional sections put forward by Fonterra under new ss 217LA and 217LB. **Relief sought:** • **Amendments to s217B, 217H, 217KA and 217M are adopted as proposed.** • **A consequential amendment is made to s217K to ensure an organisation approved by the Minister is also appointed by a regional council, as follows:** *(1) A regional council must—* *(a) appoint 1 or more certifiers; and* *(aa) appoint as a certifier any industry organisation approved by the Minister to provide certification services under section 217KA (1A) in respect of freshwater farm plans developed under a programme operated by that industry organisation.* *(b) appoint 1 or more auditors.* • **Amend proposed s217I(2)(b) as follows** *(b) request information from an approved industry organisation that the council considers reasonably necessary for carrying out its functions under this section, handling and storing the information in a way that respects any commercial arrangements between the farm operator and the approved industry organisation:* • **Additional changes to Part 9A, through new ss 217LA and 217LB, are made as proposed by Fonterra.**

Clause 59 inserts new section 314A, allowing the Environment Court to revoke or suspend a resource consent for non-compliance with the principal Act.	**DairyNZ supports the proposed amendments in part** The bar set for triggering proposed new s314A should be significant, given it provides for revocation or suspension of a resource consent and renders the consented activity illegal. DairyNZ considers that, allowing for some minor wording changes, the bar for triggering s314A is sufficiently high, and the requirement for a local authority or the EPA to demonstrate to the Environment Court or District Court (subject to the criteria at s314A(1)) provides for a robust process. Together, the proposed trigger for s314A and the more robust process make s314A preferable to the proposed amendment to s128 (dealing with a review of consent conditions, discussed earlier in this submission), particularly given a review of, and amendment to, consent conditions may result in a similar impact to revocation or suspension. The test in (2) is difficult to prosecute or defend. We recommend (2) is replaced with a requirement for the local authority or EPA to demonstrate its application gives effect to section 5 of the RMA. This would ensure the local authority or EPA has given due consideration of the consent holder's investment and existing activities. As with our submission on clause 36, we seek wording amendments to ensure the proposed triggers for and processes supporting new s314A are set appropriately. Given revocation or suspension of a consent can render some commercial activities unviable we also seek wording changes to ensure that these impacts are at least considered through the court processes. In addition, many dairy farming related activities are ongoing and cannot simply be "switched off". To this end, we have suggested inserting a provision protecting existing activities while replacement resource consents are applied for. Otherwise, regional councils risk being left with "orphaned" farms. **Relief sought:** • **Amend proposed s314A as follows** *(1) If a local authority or the EPA is satisfied that there has been ongoing, significant, ~~or~~ and repeated non-compliance with this Act in relation to a resource consent, it may apply to the Environment Court (in any case) or the District Court (if proceedings for an offence are taken in that court) for an enforcement order—* *(a) revoking the resource consent in whole or in part; or* *(b) suspending the resource consent in whole or in part for a specified period.*

	(2) The local authority or EPA must demonstrate ~~in~~ its application gives effect to section 5 ~~that, on the balance of probabilities, the revocation or suspension is in the best interests of the public and will not result in any adverse effects on the environment~~ . *(3) The local authority or EPA must, within 5 working days after it applies to the court, serve notice of the application on every person directly affected by the application.* *(4) The court may, having regard to the nature of the non-compliance,—* *(a) revoke the resource consent in whole or in part with effect on a specified date; or* *(b) suspend the resource consent in whole or in part for a specified period without conditions or subject to any conditions the court thinks fit.* *(5) Subsection (4) does not apply until the holder of the resource consent has been given an opportunity to be heard.* *(6) No court may order that compensation or redress be paid or provided to any person for any loss or damage arising from the revocation or suspension of the person's resource consent under this section. This does not affect a Court's ability to make an award of costs.* *(7) A consent holder's rights under section 124 of the Act are not affected by a local authority or the EPA making an application under subsection (1).*
Clause 60 amends section 322(1)(b), which provides the scope of abatement notices, to increase consistency with the scope of enforcement orders under section 314.	**DairyNZ supports the proposed amendments in part** At present s322(1)(b) allows an enforcement officer to serve an abatement notice where the enforcement officer considers, (alongside other matters – **emphasis ours**) *...is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, **and also** necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment..."* Our concern relates to a compliance officer no longer having to consider whether it is also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment when requiring mitigation, as is required at existing s322(1)(b). The proposed amendment is too broad. It potentially allows an enforcement officer to issue an abatement notice even when a person is complying with consent conditions. This does not provide any certainty to consent holders and provides enforcement officers far too much scope to issue abatement notices. DairyNZ supports the proposal to widen the criteria to include a national environmental standard. However, we also consider it important to retain the requirement for a compliance officer to consider whether an action is necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment when considering whether an activity is compliant with the Act itself.

	Relief sought: • **Existing s322(1)(b) is amended as follows** *(b) requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, a national environmental standard, ~~any~~ regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—* *i. caused by or on behalf of the person; or* *ii. relating to any land of which the person is the owner or occupier:*
Clauses 65 and 66 - Increased penalties and making insurance against fines or infringement fees under the RMA unlawful.	**DairyNZ opposes the proposed amendments in part.** The Bill proposes major changes to infringement offences and penalties through an amendment to section 339 (clause 65). It raises the maximum fine under section 339(1)(a) from $300,000 to $1,000,000, and from $600,000 to $10,000,000 for a person other than a natural person under section 339(1)(b). DairyNZ agrees that in some circumstances it is not appropriate for an insurance company to pay the fine for a breach, such as when a breach is intentional or for commercial gain. Penalties should deter non-compliance, and those who are negligent or act deliberately should face consequences. We acknowledge that insuring against fines can reduce their deterrent effect. However, it is important to recognise that dairy farming is subject to a range of complex interactive factors, in particular environmental factors, that are outside the farmers' immediate scope of control. It is worth noting the specific wording of s15 of the Act, addressing the discharge of contaminants into the environment. S15(1) stipulates that (**emphasis ours**) *No person may discharge any—* *(a) contaminant or water into water; or* *(b) contaminant **onto or into land in circumstances which may result in that contaminant** (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or…* *…unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.* The specific wording of s15 means that dairy farmers have faced compliance action or prosecution even when they have used well-maintained, up-to-date equipment that has unexpectedly broken down. Examples include effluent storage or

	application failures caused by minor errors from new staff or severe weather events affecting storage and discharge. In these cases, there is no intent to discharge effluent to land in a way that risks contaminating water. It is important to recognise many unintended offences under the RMA are strict liability offences, which means that it is not necessary to prove that a person intended to commit an offence or was reckless or negligent. Where an offence is unintended it is not an example of a farmer avoiding compliance costs for 'commercial gain' or as a 'cost of doing business'. This assumes farmers prefer paying fines over upgrading infrastructure, despite the reputational damage, financial impacts from banks or insurers, and the practical reality that failure to upgrade infrastructure is only a short-term answer to a long term problem, with multiple infringements likely. DairyNZ is opposed to the higher penalties for these reasons. However, our primary concern is not the higher fines themselves. We trust that factors such as intent, existing infrastructure, and extreme weather will be considered in council compliance efforts and when penalties are assessed. The greater issue lies in the proposal to ban insurance coverage for fines while significantly increasing their maximum amounts. This creates a risk of disproportionately punitive financial penalties for circumstances beyond a farmers' control. The ability to insure creates a mechanism for managing these risks. Farmers often have very high levels of capital investment when compared with the cash income that they generate. The ability to manage risks outside of their control can provide farmers with a greater degree of surety to enable greater capital investment in mitigations, for example effluent storage and discharge. Previous non-compliance is a factor that can be considered by an insurance company when assessing insurance premiums. Additionally, other proposed amendments, such as recognising previous non-compliance during consent application processing (clause 36), already serve as strong deterrents. **Relief sought:** 1. **Retaining the current maximum level of fines under s339(1).** 2. **Deletion of new section 342A which makes unlawful certain contracts of insurance against fines or infringement fees. If s 342A is retained, then subsection (3) should also state that the prohibition against insurance does not apply to expert fees and court costs.**

DairyNZ would welcome the opportunity to be heard by the Environment Committee in support of this submission.

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SUBMISSION ENDS