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## **Submission to the Primary Production Committee on the Resource Management (Freshwater and Other Matters) Amendment Bill**

### **Introduction**

DairyNZ welcomes the opportunity to submit to the Primary Production Committee on the Resource Management (Freshwater and Other Matters) 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.

### **Focus of submission**

The Bill proposes to several amendments of direct relevance to dairy farmers. Our submission focuses on the following proposed amendments.

- Excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management 2020 from resource consent applications and resource consent decision-making processes.
- Suspending requirements for councils to identify, and include in plans, new SNAs under the National Policy Statement for Indigenous Biodiversity (NPSIB) 2023 for three years.
- Extending the time for councils to identify new SNAs under the NPSIB until December 2030.
- Removing low slope land requirements regulating the access of farm animals to water bodies.
- Removing requirements relating to intensive winter grazing.
- Expediting the creation or amendment of national direction under the RMA.



DairyNZ recognises the Primary Production Committee is encouraging submitters to focus on the specific issues addressed in the Bill. We are also aware of the intention to replace the RMA. However, there are matters that are sufficiently urgent to warrant amendment. These are:

- Urgent amendments to ss 70 and 107 Resource Management Act.
- Suspension of the power of regional council / unitary authorities to notify freshwater planning instruments to give effect to the NPS for Freshwater Management.

### Summary of submissions

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

DairyNZ supports the following proposed amendments:

- To exclude the hierarchy of obligations within the National Policy Statement for Freshwater Management 2020 from resource consent applications and resource consent decision-making processes.
- To suspend requirements for councils to identify, and include in plans, new SNAs under the National Policy Statement for Indigenous Biodiversity (NPSIB) 2023 for three years.
- To extend the time for councils to identify new SNAs under the NPSIB until December 2030.
- To remove low slope land requirements regulating the access of farm animals to water bodies.

DairyNZ seeks changes to the proposed amendments in relation to Intensive Winter Grazing, through

- Retention of Regulation 26 of the NES Freshwater, with amendments through deletion of 26 (4) (a) relating to farm area, and 26 (4) (b) in relation to slope.
- Deletion of regulations 26A and 26B of the NES Freshwater.

DairyNZ supports the amendments aimed at expediting the creation or amendment of national direction under the RMA in part. We seek additions to proposed s32AB, namely:

- Addition of a clause similar to s 32 (4), requiring the consideration of whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.
- Addition of a clause that specifically requires an assessment of regulatory efficiency and the impacts of national direction on employment, similar to that at 32(2)(a)(ii), the related requirement at 32(2)(b) to quantify these benefits and costs if practicable, and the requirement to assess the risk of acting or not acting similar to 32(2)(c).
- Retention of wording from s 32(1)(b)(ii) relating to efficiency.

DairyNZ seeks additional amendments through this Bill.

- Amendments to ss 70 and 107 of the RMA to clarify these relate to point source discharges only.
- Amendment to s 80A of the RMA suspending the effect of the National Policy Statement for Freshwater Management 2020 until a replacement has been developed and implemented.



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### Submissions on specific amendments

Proposed amendment	DairyNZ submission
<p>Excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consent applications and resource consent decision-making processes.</p>	<p><b>DairyNZ agrees with the proposed amendment.</b></p> <p>The Te Mana o te Wai 'hierarchy of obligations' prioritises</p> <ul style="list-style-type: none"><li>• first, the health and well-being of water bodies and freshwater ecosystems</li><li>• second, the health needs of people (such as drinking water)</li><li>• third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.</li></ul> <p>In practice, proving alignment with the hierarchy through a resource consent has proven prohibitive for consent applicants. The amendment will provide much needed clarity and efficiency.</p> <p>DairyNZ considers that proposed clause 41 of Schedule 12 could also relate to resource consent applications lodged but not yet determined. The wording in the Bill encourages withdrawal and re-lodgement of resource consent applications, which is inefficient from a time and cost perspective.</p> <p>The amendment is not a 'quick fix'. Where provisions have already been made or proposed giving effect to the hierarchy, these will still apply. Until a replacement to the NPS-FM is developed, regional councils will still be required to give effect to the hierarchy through regional plans. These are issues still to be addressed.</p> <p>DairyNZ recognises the intent of Te Mana o te Wai and the associated environmental and cultural values the concept is seeking to deliver. Delivery is best achieved through empowerment of regional councils to work with tangata whenua and communities, rather than imposing values upon them.</p>



	<p>DairyNZ is developing a framework for a replacement to the NPS-FM which provides a rebalanced approach, focusing on the identification and delivery of environmental, human health and cultural outcomes. We welcome any opportunity to work with officials and elected representatives on this.</p>
<p>Suspending requirements for councils to identify, and include in plans, new SNAs under the National Policy Statement for Indigenous Biodiversity (NPSIB) 2023 for three years.</p> <p>Extending the time for councils to identify new SNAs under the NPSIB until December 2030.</p>	<p><b>DairyNZ agrees with the proposed amendments.</b></p> <p>A new section (s 78) is to be added (Time-limited modifications to NPSIB 2023). This will provide more time for councils to identify and notify new SNAs under the NPSIB 2023. Over this time the process for identifying and managing SNAs will be reviewed.</p> <p>SNAs are intended as areas containing significant indigenous vegetation or significant habitat of indigenous fauna that warrant higher levels of protection. In practice there have been varying interpretations of what is 'significant' and the processes for identifying and mapping SNAs have been varied and imprecise.</p> <p>These issues have resulted in large areas of productive farmland being captured as SNAs. This has imposed unnecessary regulatory costs and restrictions. Importantly it has undermined farmer trust in the process.</p> <p>However:</p> <ul style="list-style-type: none"> <li>• The amendment will not affect existing SNAs already identified.</li> <li>• The amendment will not remove the obligations of regional councils under other provisions in the RMA in relation to significant indigenous vegetation or significant habitats of indigenous fauna.</li> </ul> <p>It is important that government officials continue to work with local government in relation to those areas not impacted by the proposed amendment, with a view to supporting efforts focused on working with landowners at the catchment and farm scales.</p>
<p>Removing low slope land requirements regulating the access of farm animals to water bodies.</p>	<p><b>DairyNZ agrees with the proposed amendment.</b></p>



	<p>This amendment will have little practical impact on dairy farmers. Dairy cattle and dairy support cattle will still require exclusion. Dairy farmers have already stepped up to the challenge to exclude stock. Dairy companies report nearly 25,000 kilometres (or 98%) of Water Accord waterways<sup>1</sup> on dairy farms have already been excluded from stock.</p> <p>Cumulative sediment loads and waterway E. coli levels remain an important issue to address in relation to freshwater management. Sediment and bacterial sources are contributed by all pastoral landuses, not only Dairy. Stock exclusion and setbacks from waterways remain key tools for addressing these contaminants. Stock exclusion regulations that are too loose can make environmental outcomes harder to achieve or result in additional controls on dairy farmers.</p> <p>In our view there are two inherent questions posed through this amendment. The first is whether stock exclusion regulations should be set at a national level. The second is the role/s of freshwater farm plans in managing stock exclusion in a risk based, and farm specific way.</p> <p>DairyNZ agrees stock exclusion can be effectively managed at a regional level. We recognise in some instances this may require stock exclusion regulations that exceed those required under the NES to deliver the environmental outcomes desired in that catchment. Deletion of these stock exclusion regulations will not remove the requirement to address stock. It will simply provide more scope and responsibility for regional councils to develop targeted responses based on freshwater quality issues within specific catchments.</p> <p>DairyNZ also agrees that freshwater farm plans can play a more active role in management of the environmental effects associated with stock exclusion at the farm level, if enabled by an improved NPS-FM which makes best use of freshwater farm plans.</p> <p>Enabling more effective and efficient management through regional planning processes and freshwater farm plans requires an improved NPS-FM with sufficient flexibility for regional councils to set regulations that are focused on delivering human health and environmental outcomes, and a sufficient role for freshwater farm plans. As above, DairyNZ welcomes any opportunity to work with officials and elected representatives on this.</p>
<p>Removing requirements relating to intensive winter grazing.</p>	<p><b>DairyNZ seeks change to the proposed amendment.</b></p>

<sup>1</sup> Defined as deeper than a red-band gumboot (ankle deep), wider than a stride (1 metre) and permanently flowing.



DairyNZ agrees with the intent behind the proposed amendment. However, we seek:

- **retention of regulation 26 of the NES Freshwater (with amendments)** and
- **deletion of 26A (Pugging standard) and 26B (Ground cover standard).**

The changes we are seeking differ from those proposed, namely deletion of the permitted and restricted discretionary activity regulations and retention of the stand-alone pugging and ground cover standards.

Our reasoning is twofold. First, it is important to maintain a permitted activity standard in the national regulations. Doing so will provide for management of IWG through freshwater farm plans once available. In the interim, the permitted activity conditions at 26 (4)(d) and 26 (4)(e) provide a permitted activity pathway with good, effects based minimum standards for IWG, focused on matters farmers can control.

Second, regulations 26A (Pugging) and 26B (Ground cover standard) are problematic and ill-suited as independently enforceable standards. Pugging and ground cover are two areas that farmers often have little control over when faced with weather events outside of their control. Compliance with these standards is also difficult to assess from a regulatory perspective.

In relation to pugging, it is a minimum expectation that farmers plan for how they will manage the effects of winter grazing on the environment. This includes a minimum expectation to plan for a weather event and manage risks should one occur. However, it is not clear what taking “all reasonably practicable steps to minimise adverse effects” of any pugging looks like in practice.

In relation to ground cover, farmers have clear incentives to establish vegetation as ground cover as soon as practicable after grazing.

The effect of retaining these stand-alone regulations in relation to pugging and ground cover is to capture what should be a minimum expectation of farm management but do so in a way that creates doubt and uncertainty for farmers and regulators. This makes regulations 26A and 26B ineffective regulatory tools and these matters could be better addressed, for example, as matters to be considered in freshwater farm plans.

Comparatively, retention of core components of regulation 26 sets out clear standards in relation to controllable variables in the form of setbacks and critical source area management. Clear expectations around minimum standards in relation to critical source areas and setbacks is an ‘effects based’ approach with sound reasoning and a clear connection to environmental outcomes.



	<p>Relief sought:</p> <ol style="list-style-type: none"> <li>1. Retention of Regulation 26 of the NES Freshwater, with deletion of 26 (4) (a) relating to farm area, and 26 (4) (b) in relation to slope</li> <li>2. Deletion of regulations 26A and 26B of the NES Freshwater.</li> </ol>
<p>Expediting the creation or amendment of national direction under the RMA.</p>	<p><b>DairyNZ supports the proposed amendment in part.</b></p> <p>As an organisation involved in resource management issues at the national and regional levels, DairyNZ is aware of the sometimes convoluted and expensive processes relating to the development of, amendments to and implementation of national direction.</p> <p>Resource management is a multi-faceted and complex area with far reaching implications. National direction should be appropriately considered and informed. Our concern is that an intention to reduce the processes and requirements relating to national direction under the RMA may result in poorer outcomes. This comes at a time when farmers are seeking both more certainty and practicality in relation to the regulations they are working with.</p> <p>We are more cautious in respect of the proposal to develop an alternative pathway, 32AB, for evaluation of national direction. The requirements for evaluation of national direction under s32 of the RMA are significant but, in our view, necessary. If anything, we believe the preparation of recent national direction has suffered from insufficient analysis, not too much. In combination with the existing pathway at s 44 (3) for ‘minor’ or ‘technical’ amendments, and addition of a broader range of exceptions at 46A, the door for more efficient amendments is reasonably wide open.</p> <p>In our view, the creation of or amendments to national direction should clearly and directly consider the impacts at the regional level. A fundamental question that has not been posed through recent national direction has been whether and to what extent provision of national direction is a better approach to regionally specific regulation.</p> <p>We are also cautious of the proposal to remove specific reference to the word ‘employment’ in relation to national direction given restrictions on farming activities can impose significant downstream employment costs through reduced production or farm servicing, particularly in rural communities.</p> <p>DairyNZ supports:</p> <ul style="list-style-type: none"> <li>• The removal of the Board of Inquiry process, which we understand is seldom used and of little value.</li> </ul>



	<ul style="list-style-type: none"> <li>The proposed amendments to s 44(3), providing a broader, and relevant, range of exceptions to the requirements under 46A.</li> </ul> <p>DairyNZ is not opposed to the addition of s 32AB, however we seek:</p> <ul style="list-style-type: none"> <li>Addition of a clause similar to s 32 (4), requiring the consideration of whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.</li> <li>Addition of a clause that specifically requires an assessment of the impacts of national direction on employment, similar to that at s 32(2)(a)(ii), the related requirement at 32(2)(b) to quantify these benefits and costs if practicable, and the requirement to assess the risk of acting or not acting similar to 32(2)(c).</li> <li>Retention of wording from s 32(1)(b)(ii) relating to efficiency. Overregulation of farming has been a persistent feature of the resource management system and in our view unnecessary. Freshwater farm plans (and farm plans more generally) should be used to enable farming to occur as permitted activities without the need for costly resource consenting processes.</li> </ul>
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**Additional matters**

There are three amendments required to the RMA which are not addressed in the Bill. These amendments are urgently required, relatively easy to implement, and pose significant risk to the ability to operate for farmers and other land uses if not addressed.

Issue	DairyNZ submission
Amendments to ss 70 & 107 RMA - Discharges	<p><b>DairyNZ seeks amendments to ss 70 and 107 of the RMA through this Bill.</b></p> <p>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”:</p> <ol style="list-style-type: none"> <li>a. The production of conspicuous oil, grease films, scums or foams, or floatable or suspended materials.</li> <li>b. A conspicuous change in colour or visual clarity.</li> <li>c. Objectional odours.</li> </ol>





- d. Freshwater being unsuitable for consumption by farm animals.
- e. Significant adverse effects on aquatic life.

Section 107 of the RMA is similar, and prohibits the granting of discharge permits if, “after reasonable mixing” the same effects arise in the “receiving waters”.

Since the enactment of the RMA, most parties appear to have accepted that ss 70 and 107 apply to point source discharges only i.e. discharges from an identifiable source, such as a pipe.

However, three recent court decisions have moved away from this conventional approach. In *Aratiatia Livestock Limited v Southland Regional Council* the Environment Court held that

- a. 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.
- b. Section 70 applies beyond point source discharges to diffuse discharges of contaminants, such as those from pastoral farming activities.
- c. The application of s 70 to diffuse discharges was appealed to the High Court in *Federated Farmers Southland Incorporated v Southland Regional Council*. The High Court confirmed the Environment Court’s decision that s 70 applies to diffuse discharges.

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. Requiring a consent for standard farming practices is impractical, unnecessary, and costly.

In a separate case, the High Court in *Environmental Law Initiative v Canterbury Regional Council* judicially reviewed the Canterbury Regional Council’s decision to grant discharge consent to Ashburton Lyndhurst Irrigation Ltd for the diffuse discharge of nitrogen from the farming activities of its shareholder farmers. The High Court found the Council failed to recognise that the existing cumulative significant adverse effects on aquatic life, including from the proposed diffuse discharge of nitrogen, prevented the granting of consent under s 107(1)(g).

The High Court decision regarding s 107 has recently been appealed (by Environment Canterbury and by Ashburton Lyndhurst Irrigation Ltd). There is a possibility that the s 70 Decision will also be appealed. Despite the possibility of further consideration of these sections by the appellate court, our concern is that there is ambiguity in the application of ss 70 and 107 for a wide



	<p>range of activities and, even if the appeals were successful, there would still likely be a need to clarify the application of these sections.</p> <p>DairyNZ recognises that reform of the RMA is proposed. However, these amendments are urgent and cannot wait. If not addressed they raise a risk for the continued operation of all land uses, not just farming.</p>
<p>Suspending the power of regional council / unitary authorities to notify freshwater planning instruments to give effect to the NPS for Freshwater Management.</p>	<p><b>DairyNZ seeks amendment to s80A of the RMA through this Bill.</b></p> <p>DairyNZ has supported the coalition government’s extension to the timeframe to give effect to the NPS-FM 2020, and the commitment to review the NPS-FM. Many regional councils have indicated they will take the practical step of waiting for these amendments prior to notifying regional freshwater planning instruments.</p> <p>DairyNZ is concerned that a handful of regional councils will press on with proposals to notify freshwater planning instruments before a replacement to the NPS-FM is in place. Doing so prior to the development of a new NPS-FM will create unnecessary cost and confusion. At present there is nothing stopping a regional council notifying a proposed plan under the NPS.</p> <p>DairyNZ is seeking an amendment to <i>80A Freshwater planning process</i>, suspending the effect of the National Policy Statement for Freshwater Management 2020 until a replacement has been developed and implemented. This amendment is outlined below:</p> <p style="padding-left: 40px;"><b>80A Freshwater planning process</b></p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;"><b>(4) A regional council must—</b></p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;"><b>(b) if the purpose of the freshwater planning instrument is to give effect to the National Policy Statement for Freshwater Management 2020, publicly notify the freshwater planning instrument <u>from 1 January 2026 and by 31 December 2027.</u></b></p>



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

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**SUBMISSION ENDS**