DairyNZ

Submission on the Natural Environment and Planning Bills 2026

13 February 2026

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Regarding: Proposed Natural Environment Bill and Planning Bill

DairyNZ welcomes the opportunity to provide feedback on the Natural Environment and Planning Bills.

Scope and focus of this submission

1. DairyNZ has aimed to provide a comprehensive and constructive response to both Bills. Where we disagree with the proposed drafting, we have offered what we consider to be clear and workable alternatives. Our ability to do so has been constrained by the limited timeframe for assessment, the structural interplay between the two Bills, and the extent to which key matters will depend on forthcoming national direction, national standards, and regional implementation. Our alternative drafting should be read with these constraints in mind. DairyNZ remains committed to working with officials on refinements through the select committee process.

We support a durable, equitable, and practical system that provides certainty for primary production

2. DairyNZ supports the intent of reform of the Resource Management Act. The existing system is expensive, complex, and has not delivered the environmental, economic, or social outcomes that dairy farmers and other New Zealanders expect. We therefore welcome the Government's ambition to replace the RMA through the proposed Natural Environment Bill and Planning Bill.
3. However, while we support the direction of change, we consider that significant amendments are required for the proposed legislation to be workable, enduring, and effective in practice. Farmers need robust and stable settings so they can invest with confidence in their businesses, including in on-farm mitigations and catchment-scale environmental improvement.
4. DairyNZ is committed to working constructively through the select committee process to improve the proposed legislation and help deliver a system that achieves better outcomes for farmers, the environment, communities, and the economy over the long term.
5. This will require significant changes to the current drafting.

DairyNZ's recommendations:

- **Clear permitted activity pathways** for low-risk activities in all catchments and limiting of registration requirements to cases where there is clear, evidence-based justification.
- **Defer the introduction of new market mechanisms** until robust assessment confirms they are suitable and effective, especially in relation to diffuse discharges.
- **Ensure Freshwater Farm Plans** operate as a practical alternative to permits, not an added requirement.
- **Enable outcome based environmental limits,** including qualitative measures that reflect the complexity and variability of different catchments and management units.
- **Redesign Action Plans** as collaborative, non-regulatory tools with required engagement from farmers, communities and mana whenua before regulatory measures are triggered.
- **Focus Spatial Plans** on defining areas for future urban and infrastructure development and supporting rural communities while enabling primary production in rural areas.
- **Add safeguards to Ministerial powers** by requiring robust assessment of any policy or regulatory changes.

DairyNZ

6. DairyNZ is the industry-good organisation representing all New Zealand dairy farmers. We help farmers build profitable, sustainable, and resilient farm businesses through extension, advocacy, science, and research. Our purpose is to deliver a positive future for New Zealand dairy farming.
7. Funded by a levy on milksolids paid by all dairy farmers under the Commodity Levies Act 1990, a significant portion of our work supports research and development to deliver water quality outcomes.

Next steps

8. Our submission offers constructive, actionable feedback, including targeted re-drafting of key clauses. We welcome further engagement on incorporating our recommendations into the Bills and on developing the secondary legislation, national standards and methodologies that will implement them.

Nāku iti noa, nā

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Chief Executive

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Section 1: Summary of submissions

1. DairyNZ welcomes the opportunity to work with officials on redrafting the Bills. Significant amendments are required to ensure the proposed legislation will meet its stated objectives and Government intentions.
2. We also welcome continued involvement in the wider reform programme, including the development of secondary legislation and national standards. We strongly encourage officials to draw on DairyNZ's submission on the national direction for freshwater, which aligns closely with and reinforces the positions set out here.
3. Much of the legislation's impact hinges on the secondary legislation, national standards and methodologies that are still to come. We are assessing the impact of this legislation with a high degree of uncertainty.
4. A summary of our key submissions follows. These are supported by detailed analysis in section 3 of this document and specific proposed drafting solutions are set out in tables in section 4.

Table 1 – Prioritised list of key issues and solutions

Topic	Issue	Solution
Permitted activities	The permitted activity provisions of the Natural Environment Bill do not provide an efficient pathway for low-risk farming activities in all cases.	Ensure clear permitted-activity pathways for low-impact activities, supported by complementary regulatory and non-regulatory tools.
Freshwater Farm Plans	Freshwater Farm Plans do not trigger permitted activity status; instead, they duplicate existing regulatory requirements.	Establish Freshwater Farm Plans as the key tool for managing on farm risks and restrict the ability to create duplicate rules or regulations.
Introduction of new market tools	The applicability and implications of new market tools for allocation have not been sufficiently tested to justify their inclusion in primary legislation.	Defer the introduction of additional market tools in the Bills until their feasibility and impacts are fully assessed.
Levies on resource use	Resource use levies are not sufficiently accurate or appropriate for wide application at this stage.	Defer the introduction of levies in primary legislation until their feasibility and impacts are fully assessed.
Limit and cap setting	If councils are required to set numeric limits comprehensively based solely on a quantitative approach, there is a risk that limits will be poorly defined and have unintended consequences.	Retain limit-setting approach but acknowledge that quantitative limits aren't always feasible. Allow narrative limits, use direction-of-travel objectives, and ensure all limits reflect context, feasibility, and real working-landscape conditions.

Action Plans	As drafted, action plans are a highly regulatory tool and there is no guarantee that farmers and mana whenua will be meaningfully engaged.	Limit direction-setting and remove the consenting influence of Action Plans and reduce their regulatory focus. Establish a clear statutory process for community and mana whenua involvement, supporting non-regulatory approaches.
Spatial Planning	Without sufficient direction, spatial plans may pre-determine or constrain agricultural land use based on environmental limits. This would unnecessarily restrict farming activities and create duplication, lack of clarity and unnecessary costs and restrictions.	Amend spatial plan provisions to focus on urban development and infrastructure, support rural community investment, and enable primary production in rural areas. Any necessary restrictions on farming activities should remain within natural environment plans.
Evaluation and assessment reports	Evaluation reports do not require specific consideration of costs and benefits.	Increase processes to require explicit cost-benefit and risk assessment for all limit setting and caps on resource use.
Uncertain secondary legislation and reform timeframes	Implementation timelines are tight, with much depending on secondary legislation, national directions, and methodologies.	Engage early and meaningfully with key industry bodies like DairyNZ as secondary legislation and methodologies are developed.

Section 2: Overarching themes

2a Overall perspectives

1. DairyNZ welcomes reform of the Resource Management Act (RMA), currently an overly expensive and cumbersome system that too often yields ineffectual management of environmental issues (particularly in respect to freshwater).
2. Despite that general support for reform, DairyNZ is concerned about aspects of both the Natural Environment Bill (NEB) and the Planning Bill (PB), including:
    - Lessons from the last 15 years of attempting to implement the National Policy Statement for Freshwater Management (NPSFM) to improve water outcomes that have not been reflected in the Bill.
    - Various provisions relating to limits, caps and action plans that will not work in practice.
    - Lack of effective guardrails against unintended consequences - meaning that, if enacted in its current state, the regime could compound and aggravate many existing issues.
3. For the above reasons, the NEB and the PB require amendment to achieve the outcomes intended. For farming, we note the explanatory text emphasises the importance of *"enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining)"*.
4. The Bills do not deliver on this intended outcome. DairyNZ has proposed in this submission a series of targeted amendments within the framework proposed.

2b Failings of previous approaches to freshwater management

5. To the extent that freshwater outcomes are affected by farming and farming practices, the primary challenge is how to bring about change in the behaviour of farmers.
6. The key conclusions of international and New Zealand based research and practical farmer experience are:
    - The most powerful drivers are farmer-led, for example, the use of catchment groups (including farmer leaders) and local advisory networks. Messages about required change are best coming from trusted advisers like rural professionals and key farmers who can articulate the 'why'.
    - Farmers have *strong values and identities* related to stewardship, independence, productivity, intergenerational responsibility and practical knowledge. Effective management approaches frame the required change in terms such as 'good husbandry', 'future-proofing the farm', 'leaving the land better', and kaitiakitanga.
    - *Co-design and participation* improve compliance. Farmers are more likely to adopt a behaviour or practice and demonstrate long-term compliance where they have input in designing the solution, visible representation in decision making, see opportunities to adapt to local conditions, and believe that rules were shaped "with us, not to us".
    - *Regulating behaviour change* can work but only if (in addition to the above):
        - Rules are simple and unambiguous – there is a pathway for compliance that is clear and practicable

- Enforcement is credible (occasional, not unnecessarily heavy-handed)
- Farmers believe the rule is fair
- Advisers are aligned and can help implement rules.

7. Much of the relevant research in the area is cited in the MPI-commissioned report on farmer decision-making[1] and other seminal work is set out by Knook et al. (2019)[2] and Weber (1995)[3].
8. Lessons from this work are apparent in the management approaches of other jurisdictions, none of which attempt the strict calibration of on-farm standards and limits to in-stream outcomes. Elsewhere farming and the environment are managed more holistically, using a package of policy tools and services, not just issuing regulated standards and undertaking compliance and enforcement.
9. A review of approaches in Australian states and the UK for example, shows that targeted farm-scale regulation of specific practices (e.g. effluent management) sits within a strategy of supporting programmes involving extension, education, grants, and incentive programmes. This generally occurs within farmer and catchment-led work programmes (consistent with the research summarised above). Outside of New Zealand there appears to be little precedent for regulated diffuse discharge limits for farms, because of the accepted difficulty in attributing and measuring diffuse sources.
10. The NEB appears inconsistent with international practice, and New Zealand and internationally based research. The NEB seems to extend the approach inherent in the National Policy Statement on Freshwater Management 2020 (NPSFM) which DairyNZ has long held is based on the flawed belief:
    (a) Actions on farm to manage diffuse discharges can be strictly calibrated to achieve specific (numerically expressed) in-stream objectives.
    (b) Output limits/caps (e.g., maximum contaminant discharge rates) can be specified as a key means of achieving 10(a).
11. DairyNZ's position is that any new approach to managing farming should be focused on:
    - Community involved and driven catchment plans being recognised through regulation.
    - Individual Freshwater Farm Plans being developed with trusted advisers.
    - Actions being taken that improve health and ecosystem outcomes (including habitat restoration and landscape enhancement) rather than a singular focus on contaminant loss reductions.
    - Receiving water limits being calibrated to what 'good' looks like for catchments with the land use pattern that exists today.
    - Farm-scale regulation that addresses high-risk practices (like effluent management).

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[1] Journeaux, P., van Reenen, E., Pike, S., Manjala, T., Miller, D., & Austin, G. (2018). Literature review and analysis of farmer decision making with regard to climate change and biological gas emissions. Report prepared for the Biological Emissions Reference Group. AgFirst Consultants Ltd.

[2] Knook, J., Dynes, R., Pinxterhuis, I., de Klein, C. A. M., Eory, V., Brander, M., & Moran, D. (2020). Policy and practice certainty for effective uptake of diffuse pollution practices in a light-touch regulated country. Environmental Management, 65, 243–256. https://doi.org/10.1007/s00267-019-01242-y Springer

[3] Weber, K. T. (1995). Behavioural factors affecting the adoption of sustainable farming practices: A policy-oriented review. European Review of Agricultural Economics, 46(3), 417–471. https://doi.org/10.1093/erae/jbz019

- Achieving the right 'direction of travel' rather than (necessarily) strict, but highly uncertain, numeric targets.

2c Uncertainty and the need for guardrails

12. The potential degree of constraint, and therefore economic impact, of the NEB on farming cannot be assessed without clarity on the limits and caps that will ultimately apply. In addition, several provisions (including those relating to action plans) are unclear and uncertain but potentially present a significant risk that the system will generate limits/caps that are inappropriate. We explain what we mean by 'inappropriate' below.
13. Experience under the RMA and the NPSFM indicates that there has often been an implicit assumption that the introduction of catchment limits or caps, or increases in their stringency, can generally be met through incremental on-farm practice and investment over time, while allowing existing farming systems to continue (albeit they will face some increased cost and/or production constraints). However, experience also shows that this assumption does not always hold. In some circumstances, there are thresholds beyond which further on-farm mitigation—regardless of investment—cannot achieve the reductions required to meet specified targets or limits.
14. Evidence suggests that such thresholds can occur more often, sooner, and be more impactful than is anticipated. Examples are set out in Appendix 1.
15. These situations tend to arise where limits are set without:
    (a) a sufficiently robust scientific basis,
    (b) due consideration of what is achievable even in the specific context, even in the natural state,
    (c) adequate consideration of what is practicable to achieve in agriculturally productive ("working") catchments.
16. This may occur where councils are required to set numerically expressed limits despite scientific uncertainty, or where complex science is simplified for regulatory application. It may also arise where stringent ecological health objectives are applied without sufficient regard to the existing land-use context of a catchment. By comparison, in urban environments, differentiated performance standards commonly apply across land-use zones (for example, residential versus industrial areas). Similar differentiation has been much less evident in freshwater management. The recent wastewater environmental performance standards developed by Water Services Authority, Taumata Arowai compound this imbalance by setting standards that focus on the ability to manage the waste rather than consideration of the environmental objectives to be met in the relevant catchments.
17. We have provided more context on previous issues with nutrient, sediment and E. coli targets, as well as Implications for limit setting and the role of guardrails in Appendix 1.

2d Market tools for resource allocation and natural resource use levies

18. DairyNZ supports in principle measures to improve the efficiency of resource use and economic outcomes. We are however concerned about the proposed introduction of an expanded suite of market-based tools for allocating natural resources at this stage.
19. We recommend deferring their introduction into primary legislation until robust analysis has been undertaken to assess their effectiveness and likely outcomes, particularly for freshwater quality. As outlined in Appendix 3 of this submission, current tools (if available for the

contaminant) for estimating property scale contaminant losses lack the accuracy required to support credible market operation.

20. The following section summarises the information contained in Appendix 3 of this submission, outlining the essential prerequisites for efficient markets, and presents evidence showing why these conditions are unlikely to be met for non-point source discharges. Together, this evidence underpins our position that further research and meaningful consultation are needed before additional market-based instruments are progressed.

Evidence for market-based efficiencies is lacking

21. The conditions required for an efficient market and the efficiency gains typically associated with such markets are often not present for water quality.
22. Market mechanisms require observable units, predictable outcomes, low transaction costs, and well-defined property rights. As detailed in Appendix 3, these conditions are not met for non-point source pollution due to:
    - **Inability to measure:** There are no reliable/practical tools to measure or allocate contaminants at the property scale. This creates a reliance on uncertain models to estimate contaminant losses.
    - **Weak causal links:** The weak relationship between contaminant levels and actual ecosystem health means contaminant metrics cannot credibly be used to allocate costs based on environmental impact. A market built on such proxies cannot reflect the true effects of individual resource users.
    - **High spatial and climatic variability:** Complex geographic, topographical, and climatic factors within a catchment make it extremely difficult to estimate contaminant footprints with any confidence.
    - **High transaction costs:** High monitoring, modelling, and enforcement costs, combined with low participation, make contaminant trading schemes for non-point source pollution impractical. Trading schemes for water quality are often small in scale, prices move unpredictably, and the resulting price signal is unreliable.
23. As detailed in Appendix 3, international experience reinforces these concerns. Water quality trading schemes have produced modest environmental gains, and as yet unproven cost effectiveness. Consideration should be given to unintended consequences for capital values and existing investment.

Resource use levies

24. DairyNZ recognises that levies require less precision than market-based tools, but we do not consider them sufficiently accurate or appropriate for wide application at this stage. We therefore oppose their introduction into primary legislation until further work is completed on their feasibility, impacts, and implications for both water quality and water quantity.
25. DairyNZ considers resource use levies are fair and equitable only where resource use is directly measurable and clearly linked to environmental effects. As outlined previously, these conditions are not met for water quality, where contaminant losses cannot be observed and ecological outcomes depend on many interacting factors. They are only partly met for water quantity, as the environmental effects of abstraction can be estimated only roughly from volumetric data.
26. Where levies lack a clear linkage to environmental impacts, they effectively function as a general tax on resource use, raising concerns about fairness, effectiveness, alignment with

the purpose of the Act. We consider there are broader implications for iwi rights and interests.

27. Section 313(2)(b) requires levy rates to be limited to the costs of system level activities such as monitoring, investigations, research, and administration. While we support targeted funding for a component of these costs, they relate to running the overall system, not to the specific environmental impacts of individual users. This increases the risk that levies will not reflect real environmental effects.
28. We understand that a driver behind the levies is to help fund catchment scale initiatives and mitigation. However, existing mechanisms, such as targeted rates under the Local Government Act 2002 and Local Government (Rating) Act 2002, already provide a transparent way to fund these activities. These tools should continue to be used while further work and consultation is carried out on whether levies on resource use are appropriate and equitable for both water quality and water quantity.

First in, first served allocation

29. DairyNZ recognises that expressing caution about new allocation tools implies a preference for the existing first in, first served (FIFS) approach. FIFS is not perfect, and there is potential for improvement to help provide flexibility and support allocation to efficient land uses, including targeted use of market tools where the conditions outlined in Appendix 3 are met, particularly in overallocated catchments. However, further research is needed on when, why, and how such tools should be used.
30. In the meantime, FIFS remains a pragmatic, relatively low transaction cost basis for allocating resource use. Because it is currently embedded, a FIFS approach combined with appropriate consenting timeframes provides the certainty needed for long term investment.

Overall position

31. Given the measurement challenges, uncertainty, high implementation costs, and potential implications associated with market-based tools for non-point source discharges, DairyNZ recommends deferring the introduction of both new market-based tools and levies on resource use into primary legislation until further research and meaningful consultation is completed. We encourage strong primary sector involvement in this discussion.

2e Limitations of tools for allocation to property scale

32. The difficulty of measuring diffusely discharged contaminants with any meaningful accuracy at the property scale is a critical consideration for effective freshwater quality management. With the NEB signalling the use of limits and caps, allocation frameworks, and a broader suite of market-based tools, these limitations are significant.
33. Multiple planning processes, court proceedings, and scientific reviews have consistently shown that while catchment scale modelling can be sufficiently robust, property scale measurement cannot be relied on with confidence.
34. These constraints underpin DairyNZ's position seeking a deferral on proposals to introduce a wider range of market-based tools into legislation until more robust assessment and consultation have been completed, particularly in relation to water quality. Appendix 2 to this submission outlines these limitations in further detail.

Implications for the Natural Environment Bill

35. Research clearly indicates that there are insufficient tools to model diffuse contaminant loss at property scale. This lack of modelling is a key limitation and consideration for any approach to freshwater management that relies on:
    - Property scale contaminant limits and allocation systems.
    - Contaminant trading schemes.
    - Precise farm level measurement or comparison.
36. This lack of accuracy underpins DairyNZ's recommendation to defer the introduction of new market-based tools into primary legislation, particularly those for water quality allocation, until more robust research and a fuller assessment of feasibility and implications have been completed.

2f Reliance on secondary legislation, methodologies and timeframes

37. DairyNZ's submission highlights major concerns about the uncertainty created by the NEB and PB, especially for dairy farmers who need long term stability to invest in sustainable practices, on-farm mitigations, and catchment improvements.
38. Much of the practical detail that will determine how these reforms affect primary production, such as limit-setting methodologies, national standards, and Freshwater Farm Plan regulations, will sit within secondary legislation and national standards. Without this clarity, it is difficult to assess the impacts the Bills will have on dairy farming.
39. This uncertainty is compounded by the short timeframes for development of national instruments. These short timeframes risk rushed or constrained engagement with stakeholders, potentially leading to poorly refined provisions that fail to adequately balance environmental protection with the realities of productive primary catchments. This haste could result unintended regulatory and compliance burdens that undermine farmer confidence and investment.
40. DairyNZ seeks early engagement with officials on key areas of secondary legislation, national standards, and methodologies to ensure implementation aligns with practical needs on the ground. While many elements will be readily identifiable to officials, others sit alongside our core issues but remain important for us to contribute to. This includes supporting the intent to enable development on under-utilised Māori land. Through engagement with Māori levy payers, we see opportunities for a system that enables genuine partnership with mana whenua, using co-design and shared planning to support environmentally responsible land-use development, including potential dairy growth.

Section 3: Summary of key issues with specific proposals

1. Within the new system, permitted activities, Freshwater Farm Plans, and national standards should each play a complementary role.
2. Well-designed permitted activity standards efficiently manage lower-impact activities, minimising unnecessary regulatory cost and allowing farmers to focus resources on higher-impact actions and mitigations, consistent with the reforms' intent to reduce reliance on consents.
3. Freshwater Farm Plans should then serve as the primary tool for managing higher-impact, farm-specific activities that permitted activity rules cannot practically address, providing a robust process for identifying risks, tailoring mitigations, and ensuring accountability through certification and auditing.
4. National standards for specific farming activities should set clear, technically sound parameters for practices undertaken consistently across the country, establishing a coherent national baseline while leaving permitted activities and Freshwater Farm Plans to manage remaining, context-specific risks.
5. Together, these relatively low cost and effective management tools should form the foundational basis for regulation of dairy farming activities in all catchments and management units. In those examples where additional regulation is necessary, these tools should provide a starting point with further regulations implemented only where and to the extent the effectiveness of these tools is proven insufficient.
6. The Bills and forthcoming secondary legislation provide an opportunity to embed this approach and deliver improved environmental outcomes in a way that is workable for both farmers and regulators.

3a Permitted activity, Freshwater Farm Plans and National Standards.

7. Clear, certain permitted activity rules are essential for low impact farming activities. DairyNZ is concerned the current approach could force individual permits for minor activities, ignoring their low environmental risk and imposing disproportionate compliance costs.[4]
8. The permitted activity provisions of the NEB do not provide an efficient pathway for low-risk farming activities. In particular, there is an apparent emphasis on *registration* of permitted activities. It appears registration with a territorial authority is required unless the permitted activity is subject to the type of conditions placed on resource permits (including conditions relating to duration, bonds, covenants, works and services, provision of information etc). That would make a permitted activity much more akin to a consent and is a significant departure from practice under the RMA (where an activity merely had to comply with "*requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan*").

[4] Many low impact activities are currently permitted, for example, low impact activities on dairy farms in regions such as the Waikato can be operating under 15+ permitted activity rules at one time https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/Farmers-Guide-to-environmental-rules-in-Waikato.pdf

This change makes permitted activities more onerous than the status quo. The more stringent nature of permitted activities under the new regime is unnecessary and runs contrary to the Government's stated goals of enabling primary sector activities.

9. The NEB provides for Freshwater Farm Plans (FWFPs) to be required for all farms above a threshold. Having a certified FWFP in place does not appear to be associated with any concession as to activity status. From a DairyNZ perspective, a key point of an FWFP is to enable appropriate scrutiny and management of on-farm activities and risks without the need for consenting or broad-brush conditions that may not be applicable on every farm. An FWFP provided to the regional council (regardless of certification or audit status) provides valuable information to the regional council on land use and on-farm activities.
10. The NEB, however, proposes permitted activity provisions and FWFP provisions as separate and unconnected. We think this misses an opportunity and is inconsistent with the lessons from behavioural science discussed above.
11. A further issue arises from the inference in cl 32 that activities should not be classified as permitted where the anticipated cumulative effect would breach an environmental limit (or where a limit is already breached). Strictly applied, that could (depending on the level at which limits are set) lead to tens of thousands of consents for existing activities currently operating as permitted activities, and is an unnecessary limitation when appropriate conditions or permitted activity standards can manage the activity to reduce existing effects.
12. Two of the stated aims of the reform are:

    - *Enabling primary sector growth, such as aquaculture, forestry, farming, and mining, by reducing unnecessary paperwork and regulation* [our emphasis].
    - *Simplifying processes with fewer consents required, more permitted activities, and faster decision-making* [our emphasis].

13. The NEB allows national standards to guide rule implementation, including for farming. Yet farmers may still face multiple overlapping requirements, including activity registration, council notification, national standards, and audited FWFPs. The cumulative costs and obligations undermine the reform's intent to simplify the system for farmers.
14. While we accept that national direction could yet have a significant role in delivering on those aims, on the face of the NEB it is not clear how these aims are facilitated by the new permitted activity framework. The NEB should allow for FWFPs to be used as the default risk management tool, and they should be utilised to reduce compliance needs.

3b Action plans

15. Action plans present both opportunities and risks.
16. The opportunities are that:
    (a) Action plans could be prepared by a process involving those most closely connected to the issue and the solutions at the catchment level. Action plans prepared by, or in close collaboration with, farmers and mana whenua are a useful way of creating ownership of a problem and buy-in to the solution. The solutions developed are likely to be practical and effective. This contrasts with an approach where solutions are imposed which creates resentment and increases the challenges of implementation.

(b) Action plan provisions can also be set up so that non-regulatory methods must be demonstrated to be insufficient before regulatory methods are considered or recommended (which is what the proposed drafting appears to do).

17. The risks are that:
    (a) As drafted, the process for preparing action plans is not specified and there is no guarantee that farmers and mana whenua will be meaningfully engaged.
    (b) As drafted, the action plans purport to contain regulation. While that may not be the intention, it is clear that the Bill does intend that action plans have a direction-setting weight so that they bind natural environment plans and are given weight in consenting. That is inappropriate given the potential lack of due process and will not result in practical and effective solutions.
    (c) If action planning is overly expansive (in number, scope and depth), the costs could be very high. This risks imposing a significant additional cost on regional councils that will be passed on via rates or diverted from other resource management functions (including preparation of high-quality natural environment plans) and potential investment in supporting community efforts to improve ecosystem health.
18. The drafting sought by DairyNZ aims to lock in the opportunity, while minimising the risks.

3c Limit and cap setting

19. DairyNZ supports the notion that there should be limits on resource use. However:
    - It will not be technically feasible to set numeric limits on all matters based on science or empirical research identifying inherent assimilative capacity in natural systems. The idea of definable 'assimilative capacity' is common and while science will always be a key input in decision-making processes, quantitative driven science will seldom be determinative in and of itself when it comes to managing natural resources.
    - If councils are required to set numeric limits comprehensively based on a science-only approach, there is a risk that limits will be poorly defined and have unintended consequences.
    - The basis upon which limits are defined is critical to their success. To keep landowners and communities engaged, it will be essential that limits are set recognising the context and what is feasible and achievable within that context. Limits that seek to turn back the clock by pursuing 'national park-like' environmental quality will not be helpful or successful. In an urban environment it seems well-accepted that the level of amenity (for example) in an industrial area will not be the same as that in a residential area. When it comes to rural land and water management, however, the expectations can be for near natural state environmental conditions despite them being 'working' and 'highly modified' landscapes.
20. For these reasons, setting water-quality limits will generally remain a normative process where limits are informed by robust science and agreed through community input and balanced against the full range of costs, benefits, and the community's tolerance for both risk and the associated social and economic impacts.
21. We predict that in some cases, particularly for water quality, specific numeric limits will not be necessary and/or feasible, and objectives should be set on a 'direction of travel' basis.
22. Accordingly, the Natural Environment Act needs to recognise and provide for:
    - narrative limits in specific circumstances; and

- limits to be developed on a normative basis so that plans require people to do what is feasible with costs and risks acceptable to the community.

3d Evaluation reports, justification reports, and options assessment reports

23. The Bills require *evaluation reports* before notifying a proposed plan (cl 106 of the NEB and cl 10 Sch 3 of the Planning Act).
24. For specific proposals (including where bespoke provisions are used or where less stringent limits are proposed for ecological health) the NEB requires a *justification report*.
25. The spatial planning provisions of the Planning Bill require an *options assessment report* (cl 9 Sch 2, Planning Act).
26. Collectively, these provisions replace the RMA's requirement for a section 32 report.
27. DairyNZ is not satisfied that these requirements are adequate, given the potential costs at stake. We note the following:
    - An evaluation report requires no specific consideration of costs and benefits. It merely requires the setting out of how the plan implements higher order documents, a summary of the council's reasons for selecting a standardised provision when there are options, and how the draft plan was influenced by consultation (cl 106). This is despite plans containing environmental limits that have widespread, and potentially significant, implications for dairying (and other agricultural activities). An evaluation report that does not expressly require assessment of those costs and risks is not adequate.
    - We also note that although an explanation is required as to why (for farming) non-regulatory methods and FWFPs are not sufficient, that only applies where land use control or input controls are proposed. It does not apply where output controls (like controls on discharges) are proposed. It seems output controls can be required even if non-regulatory methods and FWFPs would be sufficient to achieve limits.
    - Justification reports are more robust assessments and expressly require assessment of costs and benefits (cl 108). However, they are only required in respect of a narrow range of provisions. Importantly, justification reports are not required when a council is proposing water quality or quantity (or other) limits unless a limit is proposed that is *less* stringent than a nationally regulated minimum acceptable level. Our understanding is that a council may choose a limit at levels above a minimum acceptable level but the decision on the stringency of that limit is not subject to a justification report. Equally, councils could adopt a limit that is expressed differently from how it has been expressed at a national level, also without the scrutiny of a justification report. Our opinion is that this is a significant diminution of the existing safeguard and courts peril.
28. We have been unable to locate a definition or description of an options assessment report in the Planning Bill.

3e Structure of the Natural Environment Bill

29. We do not find the drafting style easy to follow. In particular, the sequencing of provisions, cross referencing between Bills, and what appears to be unnecessary or duplicative provisions make the Bills lengthy and difficult to follow.
30. We also note that some key terms (at least from a dairy perspective) appear to remain undefined. These include the following:
    - 'The Minister'
    - 'The Department'

- ‘Over-allocation’ (used three times in the NEB)
- ‘Infrastructure’, ‘significant infrastructure’ and ‘significant Infrastructure activity’, which need to be defined since ‘infrastructure’ is a term commonly used in agriculture (to refer to, for example, irrigation or effluent systems), not just in urban or utilities sectors
- ‘Development’ and ‘development capacity’, which needs to be defined since these terms could apply to agricultural development, but it is not clear whether that is intended. For example, cl 81 required the Minister to consider whether a national policy direction ‘enables development to occur within environmental limits’. Similarly, cl 108 requires justification reports to assess reduction of development capacity. In both instances it is not clear whether agricultural development is contemplated.

3f Spatial Plans in the Planning Bill

31. The PB provides for regional spatial plans, with a broad purpose to support urban development and infrastructure and to do so within environmental limits (clause 67). This broad purpose creates several challenges and potential unintended consequences for rural areas and primary production, which DairyNZ seeks to address through targeted amendments.
32. Spatial plans are intended to organise land use and the linkages between them, balancing development with the need to protect the environment and at the same time achieve social and economic goals. As drafted the PB does not provide sufficient clarity around how these broader considerations, particularly those relating to primary production in the rural areas, are to be reflected in spatial plans.
33. There is potential for spatial plans to be strongly shaped by the environmental limits set under the NEB. This raises the risk spatial plans could set definitive boundaries for where dairy growth and intensification can occur. While the proposed regional spatial plan committees offer the potential for diverse expertise, uncertainty around committee expertise and intent, along with other unresolved details, create unclear outcomes for dairy farmers.
34. The strong reliance on environmental limits, with limited requirements to consider economic, social or cultural implications of spatial plans, could lead to several potential risks for dairy farming. Environmental limits could drive land use change through the spatial plans and/or constrain farming land use change and intensification, even where the effects of those activities are managed via the NEB and Natural Environment Plans.
35. DairyNZ would like to see targeted changes so that spatial plans are focused on urban development, infrastructure (including managing adverse effects through compliance with environmental limits) and investment in rural communities. Spatial plans should also explicitly recognise and enable primary production activities in rural areas, consistent with the system’s goals of supporting economic growth and well-functioning rural areas.
36. Our proposed targeted amendments address the purpose of spatial plans in clause 67 and include a new goal aiming at protecting highly productive land from inappropriate development.

Justification for the changes we are seeking:

37. There is no need for spatial plans to regulate pastoral farming land use in detail. Farming land use does not require coordination across territorial authority boundaries in the same way that urban development and major infrastructure does, and the environmental effects of

farming are already comprehensively managed through the NEB and Natural Environment Plans.

38. Including primary production land use at a detailed level risks duplication between spatial plans and the NEB, requiring the rural sector to engage in multiple planning processes at (potentially) enormous cost.
39. Spatial planning in rural areas should instead focus on sustaining rural communities, protecting highly productive land, and taking an enabling approach to primary production activities within the environmental limits set through the NEB and Natural Environment Plans.

Section 4: Proposed Amendments to the Natural Environment Bill 2025

Table 2 – Amendments to the Natural Environment Bill 2025

Clause	Submission	Proposed amendment
Part 1: Preliminary provisions		
Interpretation		
Definition: of *long-lived infrastructure*	We are seeking to include large-scale irrigation and water-storage infrastructure within the definition of long-lived infrastructure to enable these assets to access the 35-year consent term available under clause 179.	Amend Clause 3 to recognise irrigation and water storage infrastructure as long-lived infrastructure where it is designed for multi-decadal operation and constructed and operated to agreed engineering, safety, and performance standards. Align the NEB and PB by ensuring that definitions relating to food production and long-lived infrastructure are located in Part 1 interpretation provisions, rather than confined to narrow Schedules, designation-specific sections, or sector-specific clauses.

Table 3 – Part 2: Foundations

Clause	Submission	Proposed amendment
Part 2: Foundations		
11 – Goals	Clause 46 refers to the purpose of an environmental limit being to "protect life supporting capacity". This is inconsistent with the reference to "safeguard" in Clause 11 (b). Consistent language should be used. Protect is clearer than safeguard. [Safeguard can imply restorative action is required and, if used, needs to be caveated to reflect the reality that full and comprehensive restoration will not always be practicable]. The goals do not recognise that most of our land and water is used for primary production (most food production). That continued use of resources is vital for the well-being of New Zealanders. Recognising that reality in the goals is important is balance if the legislation is to genuinely enable the use and development of natural resources.	**11 Goals** All persons exercising or performing functions, duties, or powers under this Act must seek to achieve the following goals subject to sections 12 and 69: (a) to enable the use and development of natural resources ~~within environmental limits~~: (b) to ~~safeguard~~ protect the life-supporting capacity of air, water, soil, and ecosystems: (c) to protect human health from harm caused by the discharge of contaminants: (d) to recognise and provide for the use and development of natural resources for food production: (e) ~~(d)~~ to achieve no net loss in indigenous biodiversity: (f) ~~(e)~~ to manage the effects of natural hazard associated with the use or protection of natural resources through proportionate and risk-based planning: (g) ~~(f)~~ to provide for Māori interests through— (i) Māori participation in the development of national instruments, spatial planning, and natural environment plans; and (ii) the identification and protection of sites of significance to Māori (including, wāhi tapu, water bodies, or sites in or on the coastal marine area); and (iii) enabling the development and protection of identified Māori land.

13 – Procedural principles	The drafting of this clause would benefit from minor wording changes and additional text to sharpen the intent and effect. It is also important to acknowledge that managing activities' effects on the natural environment is often an exercise in risk management since the degree of effect is typically dependent on biophysical conditions that vary spatially and temporally. Also, the principles, though broadly supported, are likely to add little value unless there is some sanction for non compliance. Accordingly, we propose that provision be made for a declaratory judgement to be sought from the Planning Tribunal. In addition, while acting in an enabling manner is supported. this appears to be a decision-making rather than procedural principle (see following submission point).	**13 Procedural principles** (1) A person exercising or performing functions, powers or duties under this Act must ~~take all practicable steps to —~~ (a) ensure all documents are succinct and use plain language that can be readily understood by the public: (b) act in a timely, consistent, and cost-effective manner: (c) if no time limit is prescribed for exercising or performing a function, power or duty under this Act, the person responsible for the action or decision must take that action or make that decision as promptly as is reasonable in the circumstances; (d)~~(c)~~ act proportionately to the scale and significance of the risk to the environment and functions, powers and duties being exercised or performed ~~matter~~: (e)~~(d)~~ ensure they have adequate ~~enough~~ information to understand the implications of their recommendation or decision ~~(if any),~~ after considering— (i) the cost and feasibility of obtaining the information; and (ii) the scale and significance of the matter to which the decision relates: ~~(e) act in an enabling manner (for example, by being solutions-focussed) that is consistent with the principles in paragraphs (a) to (d) and section 12:~~ (f) avoid unnecessary repetition in key instruments. (2) A person may apply to the Planning Tribunal for a declaration where the principles in subsection (1)(b)-(f) have not been complied with.

		(3) Where a person applies for a declaration under subsection (2), the process under clause 22A of Schedule 10 of the Planning Act will apply with all necessary modifications. (4) A local authority must report on any declarations issued by the Planning Tribunal under subsection (2) to the chief executive on a quarterly basis. *Consequential changes are required in Sch 10 of this Act. A new Clause 22A will need to be drafted consequentially (not included in this submission)*
New Clause 13A – Decision making principles	The Bill contains procedural principles (cl 13), principles for classifying activities (cl 32) and principles relating to when a Minister is making a national instrument (cl 69). Reference is also made to 'allocation principles' (cl 311) – although it is not clear where those are set out. The Bill does not, however, set out *decision-making* making principles, but it should. We propose new clause 13A be added.	**13A Decision-making principles** (1) All persons empowered to make recommendations or decisions under this Act must— (a) act in an enabling manner in accordance with subsections (b)-(e) and sections 11-13; (b) manage adverse effects including cumulative effects of using and developing the environment in accordance with the goals in section 11; (c) have regard to any measures proposed to avoid, remedy, mitigate, offset or compensate adverse effects of a proposal; (d) have regard to the positive effects of using and developing the natural environment to achieve the goals in section 11; (e) have regard to the negative effects of restricting the use and development of the natural environment; (f) grant applications for resource consent unless the consent authority can be satisfied there are adequate reasons not to do so; (g) prioritise the use of non-regulatory methods over regulatory methods.

		(2) A person may apply to the Planning Tribunal for a declaration where the principles in subsection (1) have not been complied with. (3) Where a person applies for a declaration under (2), the process under clause 22A of Schedule 10 of the Planning Act will apply with all necessary modifications. (4) A local authority must report on any declarations made under (2) to the chief executive on a quarterly basis. *Consequential changes are required in Sch 10 of this Act. A new Clause 22A will need to be drafted (not included in this submission)*
14 - Considering effects of activities	Subclause (a) (i) refers to the "*positive effect of enabling activities*". While that is supported, the more significant issue for DairyNZ is the need to consider the adverse effect of restricting activities that are already enabled. While (a) (i) speaks to the opportunity cost of not enabling new activities, it is not clear that it encompasses cost faced by existing farming activities that are subject new costs and restrictions. More broadly, the relationship of cl 14 with cl 156 is unclear. In particular, cl 14 states that any person considering the effects of an activity may consider "*any other effect*" (provided it is not an effect regulated under the Planning Act). That contrasts with cl 156 which says that in considering a permit application regard must be had to adverse effects on a person or the natural environment and any positive or cumulative effect. To add further confusion the term 'effect' is separately defined (using definition almost identical to that in the RMA).	**14 Considering effects of activities** A person exercising or performing a function, duty, or power under this Act who is considering the effects of an activity on a person, people, or a natural resource,— (a) must give particular consideration to effects such as the following, as far as each is applicable: (i) the positive effect of enabling activities under this Act: (ia) the adverse effect of restricting existing lawfully established activities: (ii) the effects on natural resources including air, water (freshwater, geothermal and coastal), land and soils, and indigenous biodiversity: (iii) the effects of natural hazards associated with the use or protection of natural resources:

	It is hard to see how the breadth of effects considered under the NEB is in anyway narrowed (and is certainly not made any clearer). The reference to "any other effect" in subclause (c) is particularly problematic since it seems to expand that scope of considerations of matters such as loss of 'public confidence in the plan', metaphysical effects, spiritual effects, psychological effects, indirect effects associated with a resource use (such as the disposal of plastic water bottles in the context of an application to take water for botting purposes).	(b) must not consider effects regulated under the Planning Act 2025 or any other enactment: (c) must not consider the end use effects of an activity. ~~(c) may consider any other effect of the activity, subject to paragraph (b).~~
15 - Considering adverse effects of activities	DairyNZ proposes to remove the hierarchy between avoiding, minimising and remedying adverse effects, and offsetting and compensating adverse effects. The Government has signalled an intention to provide more flexibility in the approach to consenting and permitting, and to encourage restoration of the natural environment. Restoration is better supported by a system that places more emphasis on offsetting and compensating. By contrast, relying on 'avoid, minimise and remedy' is a perpetuation of the status quo ('avoid, remedy, mitigate'), which has not succeeded in delivering positive environmental outcomes. DairyNZ supports the proposed wording to raise the threshold of relevant effects to "less than minor" – but would take this further by raising the threshold further to "minor effects". Minor effects are, as the name suggests, minor. That magnitude of effects are unimportant and not significant. A streamlined resource management framework need not concern itself with effects of a minor nature. It should only be concerned with matters that can have a meaningful effect on	**15 Considering adverse effects of activities** (1) A person exercising or performing functions, powers, or duties under this Act who is considering the effects of an activity— (a) must consider how— (i) adverse effects are to be avoided, minimised, or remedied~~, where practicable; or~~ ~~(ii) adverse effects are to be~~ offset or compensated~~, where appropriate~~. (b) must not consider a ~~less than~~ minor adverse effect unless the cumulative effect of 2 or more such effects create effects that are more ~~greater than less~~ than minor. (2) A national instrument may specify— (a) how, and in what order, adverse effects are to be avoided, minimised, or remedied, offset, or compensated; and

	the natural environment. Those types of effects are "more than minor" effects.	~~(b) when it is practicable for adverse effects to be avoided, minimised, or remedied; and~~ ~~(c) when it is appropriate for adverse effects to be offset or compensated; and~~ (~~d~~b) where specific effects are managed under this Act and under the Planning Act 2025. (3) If no national instrument is in force to guide or direct the use of offsetting and compensation, the management of adverse effects through offsetting and compensation: ~~must not be undertaken except in the context of determining an application for a permit.~~ (a) must not be guided or directed by provisions of a natural environment plan; and (b) may be provided for in the context of determining an application for a permit but only if the offset or compensation has been proposed or agreed to by an applicant. (4) The order in which an approach to managing effects appears in this section does not assign an order of importance to how effects are managed. (5) In this section, a ~~**less than**~~ **minor adverse effect** means an adverse effect that, after any mitigation required by a condition of any applicable rule or permit, is acceptable and reasonable in the receiving environment ~~with any change being slight or barely noticeable~~.
20 – Restrictions relating to	Clause 20 (4) (b) does not prohibit water to be taken for the reasonable needs of a person's animals for drinking water. While that intent is supported the authority is subject to the	**20 Restrictions relating to water** ...

water (Subclause (4))	caveat in sub clause (ii) that the taking does not or is not likely to have an adverse effect on <u>any</u> natural resource. Three issues arise. The first is that reference to not having '*an adverse*' effect suggests no effect (at all) is permissible. That contradicts clause 15. The second is whether this includes cumulative effects (the take together with other authorised takes). The third is that the reference to '*any natural resource*' suggests that factors other than the impact on water flow/levels could nullify the authorisation available under this clause. The changes proposed address these issues.	(4) A person is not prohibited by subsection (3) from taking, using, damming, or diverting any water, heat, or energy— (a) if the taking, using, damming, or diverting is expressly allowed by— (i) a national rule; or (ii) a rule in a plan and any rule in a proposed plan that has legal effect; or (iii) a water services standard; or 25 (iv) a permit; or (b) in the case of fresh water, if both of the following apply: (i) the water, heat, or energy is required to be taken or used for an individual's reasonable domestic needs or the reasonable needs of a person's animals for drinking water: (ii) the taking or use does not, or is not likely to, have ~~an~~ <u>more than minor</u> adverse effect on ~~any natural resource~~ <u>freshwater flows or levels</u>; or ...
32 - Principles for classifying activities	One of the stated aims of the reform is: *Simplifying processes with fewer consents required, <u>more permitted activities</u>, and faster decision-making* [our emphasis]. There is nowhere in the NEB where the aim is translated into meaningful intent. DairyNZ considers that expressing the expectation for more permitted activities is appropriate in cl 32. DairyNZ is also concerned that cl 32 does not deliberately or inadvertently bar councils from classifying farming or other activities as permitted activities in catchments where a limit might be breached. Based on experience over the past	**32 Principles for classifying activities** When exercising or performing a function, power, or duty under this Act, a person must be guided by the following principles: (a) an activity should be classified as a **permitted activity** <u>wherever possible while giving effect to the goals in section 11, national instruments or regional spatial plans (as required by section 12) including in the following circumstances</u> ~~if~~— (i) either— (A) the activity ~~is acceptable~~ <u>has (or is likely to have) effects that are minor or less than minor, is</u> anticipated, or achieves the desired level of,

	decade, it is possible that large parts of NZ will be classed as being in breach of at least one limit. While sub clause (a) does not appear to prohibit permitting activities in catchments where limits are breached, the wording does invite legal challenge. In our view requiring consents for thousands of farms is impractical and will not guarantee better outcomes. The key need is to ensure that in those catchments progress is being made towards the limit by activities operating under permitted activity rules. This would carry forward the very useful amendments recently made to section 70 of the RMA. DairyNZ considers it important controlled activity status remains available. This is an understood and embedded activity status that acts as a bridge between permitted and restricted discretionary. There should however remain a requirement to ensure that any consented activity should be required to contribute to a reduction of an environmental limit where there is a breach, and/or ensure that the activity does not contribute to the likelihood of a breach in the future.	anticipated, or achieves the desired level of use, development, or protection of the natural environment; or (B) any adverse effects of the activity on the natural environment are well understood and can be managed by other methods including national regulation, freshwater farm plans or non-regulatory methods (or some combination of those methods); and (ii) there is sufficient allocation for any anticipated cumulative effect without breaching an environmental limit: or (ii) there is insufficient allocation for the anticipated cumulative effect without breaching an environmental limit but standards can be imposed on the permitted activity that the council is satisfied will, by themselves or in combination with any other provisions in the plan: (A) contribute to a reduction of an existing breach of an environmental limit; or (B) avoid a future breach of an environmental limit if the limit is not already breached. (ba) an activity should be classified as a controlled activity if – (i) the activity is acceptable, anticipated, or achieves the desired level of use, development or protection of the natural environment, but 1 or more of the activity's effects require addressing by 1 or more conditions that are not listed for permitted activities;

		(ii) effects of the activity on the natural environment can be appropriately managed through national standards or permit conditions: (iii) any risk of breaching an environmental limit can be appropriately managed through national standards or permit conditions: (iv) conditions can be imposed on the controlled activity that the council is satisfied will, by themselves or in combination with any other provisions in the plan: (A) contribute to a reduction of an existing breach of an environmental limit; or (B) avoid a future breach of an environmental limit if the limit is not already breached. (b) an activity should be classified as a **restricted discretionary activity** if— (i) the activity is acceptable, anticipated, or achieves the desired level of use, development, or protection of the natural environment, but 1 or more the activity's effects require specific assessment; and (ii) effects of the activity on the natural environment can be appropriately managed through national standards or permit conditions: (iii) any risk of breaching an environmental limit can be appropriately managed through national standards or permit conditions: (iv) conditions can be imposed on the restricted discretionary activity that the council is satisfied will, by themselves or in combination with any other provisions in the plan: (A) contribute to a reduction of an existing breach of an environmental limit; or

		(B) avoid a future breach of an environmental limit if the limit is not already breached. (c) an activity should be classified as **discretionary activity** if— I. the nature and type of activity requires an assessment of all the effects of the activity on natural resources; or II. the adverse effects of the activity are unknown or uncertain; or III. the activity is inconsistent with the regional spatial plan; or IV. the activity is not anticipated and may be inappropriate: (d) an activity should be classified as a **prohibited activity** if it will have an unacceptably high level of adverse effects on the natural environment that cannot be managed by permit conditions.
33 - Consequences of permitted, restricted discretionary, or restricted discretionary activity classification.	The type of activity classification currently known as a *controlled activity* is not provided for in the NEB. While DairyNZ supports simplification of the activity status and consenting regime, we note that the controlled activity category is useful providing an easier and less costly 'bridge' between permitted status and consented status. The farming community, in particular, sees benefit in the certainty provided by controlled status where permitted activity status is inappropriate. For that reason, DairyNZ considers that the controlled activity category (as provided for within the RMA) should be included in the NEB. We would anticipate this category being used less	**33 Consequences of permitted, restricted discretionary, or restricted discretionary activity classification.** Insert a new Cl 33 (2A) as follows: (3A) If the activity is classified as a controlled activity, — (a) the activity requires a natural resource permit; and (b) the regional council must grant a natural resource permit subject to section 164; (c) the regional council's power to impose conditions is restricted to the matters over which control is reserved

	frequently that in the past with greater use of the permitted activity category.	in a natural environment plan, proposed natural environment plan, or national rule; and (d) the activity must comply with any requirements, conditions and permissions, if any, specified in the permit, Act, regulations, plan or proposed plan. *Consequential amendments are required to, for example, cls 155, 156, 165.*
39 – Permitted activity rules	Clause 39 states that a permitted activity rule must require an activity to be *registered* with the council or "*relate to a matter described in section 169*". The purpose of that alternative approach is unclear. Further, registering permitted activities will be an unnecessarily costly and bureaucratic exercise for the large number of very small-scale, low risk, often already existing activities likely to be permitted by natural environment plans. The alternative of a permitted activity rule "relating to a matter described in section 169" is confounding because cl 169 relates to 'particular conditions' that may be placed on permits. Moreover, the particular conditions listed in that clause, do not appear to include the simple conditions (such as bulk and location requirements) that are typically applied to permitted activities. They relate to more complex, or less applicable conditions, such as consent durations, bonds, works and services, covenants and the like. Whereas the sort of condition that would be appropriate on an activity such as (for example) use of land for a silage pit, would be a simple requirement to locate the pit a prescribed minimum distance from any surface water feature. With current drafting, it is	**39 Permitted activity rules** (1A) A permitted activity rule may include one or more conditions designed to manage any adverse effect of the activity, which may include a condition described in section 169 (as if that section applied to permitted activities). (1) A permitted activity rule must— (a)require an activity to be registered if registration is required by a national instrument or a plan; or (b)relate to a matter described in **section 169** (2) A permitted activity rule referred to in subsection (1)(a) must provide that an activity is a permitted activity only if— (a)the activity is registered with the territorial authority (see section 202); and (b)the person carrying out the activity does 1 or more of the following: (i)obtains the written approval of all persons who may be directly affected by the activity: (ii)obtains a certificate from a qualified person that the activity complies, or would comply, with any specified requirement:

	not clear whether such simple permitted activity rules would be permissible under the NEB. In our opinion they should be if the intent is to maintain an efficient regulatory system for agriculture. We note also, that cl (2) states that registering must be with a territorial authority. That makes no sense for permitted rules set in a natural environmental plan administered by the regional council.	~~(iii)pays a fee fixed in accordance with section 229:~~ ~~(iv)complies with any other requirement relating to a matter described in section 169~~. (3) A permitted activity rule referred to in subsection (1)~~(a)~~ may specify requirements for the information that must be included in the notice required by section 202. ~~(4) An approval described in subsection (2)(b)(i) is valid for 3 years from the date it is given, unless withdrawn in writing by the person who gave it.~~ (4) The time by which a person must register an activity described in (1) may be set in national standards and may include registering an activity after it has commenced.
45 – Defined terms	There is a lack of process specified for the preparation of an action plan. As drafted, the Bill appears to allow for a councils to establish their own processes where the Minister has not set out a process through national regulation. DairyNZ does not agree with such a loose arrangement and considers that action plans should only be required/available where a Minister has set out a prescribed process. The definition of 'action plan' does not assist in understanding whether such plans are able to regulate independent of national regulations or natural environment plans. DairyNZ considers that action plans should focus on what is needed in a practical sense to address a breach of a limit at a local level. They may contain: • non-regulatory methods; and	**45 Defined terms** **Action plan** means a plan prepared in accordance with a process specified in a national standard containing measures to manage compliance with an environmental limit, including— (b) non-regulatory measures (such as work plans and partnership arrangements with tangata whenua and community groups); and, to the extent that these measures are insufficient, (b) recommended regulatory measures (such as those described in section 63(1) or the revision of limits) For the avoidance of doubt: • an action plan may describe the rules already in force under national instruments or under the natural environment plan.

	• recommendations for changes to regulatory setting including limits and caps. Action plans should however be prepared in such a way that non regulatory and farm and community-based solutions are considered before changes are made to regulatory settings. The non regulatory methods likely to be required might include the establishment of catchment groups, the development of programmes that provide advice and/or financial support for landowners and similar methods. It is also important to recognise that a valid recommendation of an action plan may be to revisit an environmental limit. We have recent experience of limits being imposed under the NPSFM that proved to be inappropriate. The only remedy to the breach of such a limit may be to amend the limit. The definition of 'attribute' requires that all attributes are measurable. The definitions of state attribute and stress attribute suggest that both state and stress attributes are measurable. This implies a scientific 'tidiness' that does not uniformly exist and may force councils to adopt limits that are not sound measures of the outcomes communities seek or the appropriate target for intervention. The definition of 'freshwater' should take the definition from the RMA. The current definition conflates the distinction between the physical medium and the ecological systems it supports. The term 'ecosystem' is used extensively in the Bill but is not defined.	• any new regulatory measure recommended in an action plan does not have effect until incorporated in a natural environment plan in accordance with Schedule 3 of the Planning Act. The Minister must first establish a process to prepare an action plans before an action plan can be prepared or have effect. A**ttribute** means a measurable biophysical characteristic that can be used to assess the state of a domain or part of a domain the extent to which a particular value (for example, human health or ecosystem health) is provided for **limit** means the minimum desired biophysical state of an attribute within a management unit **freshwater** means all freshwater ecosystems water except coastal water and geothermal water **state attribute** means an identified biophysical state of the natural environment **stress attribute** means an identified biophysical stress on the natural environment.

48 - How environmental limits are expressed	Clause 48 allows environmental limits to be expressed as either a biophysical state **or** the amount of harm or stress to the natural environment. That makes little sense because it is will not be possible to identify the amount of stress that should be allowed unless you first know that biophysical state to be targeted. Allowing an environmental limit to be expressed as a "amount of harm or stress" risks focusing on a single risk factor when ecological outcomes are typically the result of multiple stressors (some of which will be easier to manage than others).	**48 How environmental limits are expressed** (1) A human health ~~environmental~~ limit must be expressed as: (a) a biophysical state for a management unit (b) the amount of harm or stress to the natural environment permitted in a management unit (2) An ecosystem ~~environmental~~ limit must be expressed as a biophysical state for a management unit and: (a) ~~may~~ must relate to an ecosystem health attribute; and (b) may be expressed either narratively or numerically~~; or~~ ~~(b) the amount of harm or stress to the natural environment permitted in a management unit~~
51 – How ecosystem health limits must be set in plans	Clause (4) requires a justification report when an independent hearings panel recommends an ecosystem health limit that is less stringent that the minimum acceptable level in national standards. It does not require such a report when a recommendation is made for a more stringent limit, or the same limit but expressed in a different way. The setting of limits will have profound effects on the rural economy and the communities which rely on those economies. Each limit in each region across all domains should be supported by sufficient evidence and fully justified. Clause (4) can be deleted as justification reports are now mandatory under cl 56.	**51 How ecosystem health limits must be set in plans** (1) A regional council must set ecosystem health limits in its natural environment plans. (2) When setting an ecosystem health limit, a regional council— (a) must follow the methodology specified in national standards for setting the limit; and (b) if there is no methodology specified, may determine and follow its own methodology for setting the limit. (3) A regional council must follow the process set out in Schedule 3 of the Planning Act 2025 to include ecosystem health limits in a proposed natural environment plan or plan

		change unless and to the extent that national standards provide otherwise. ~~(4)If a regional council proposes or an independent hearings panel recommends an ecosystem health limit that is less stringent than the minimum acceptable level specified in national standards made under section 54(3)(b) for that ecosystem health limit, the council or panel must prepare a justification report under section 108.~~
52 - Criteria for decisions relating to environmental limits	The first part of the submission identifies the problems with setting solely numerical limits. In some cases, it is not feasible to set these types of limits are. The principles outlined in our submission identify situations where narrative or descriptive limits should be set. Those limits may be set using wording like "maintain" or "improve". In the farming context, those words can be translated to meaningful on-farm actions. FWFPs can be used to "improve" farming performance over time. Examples include incremental increases in riparian planting, or decreased use of fertiliser, changes to stocking policy, and so on. Also discussed at the outset of this submission, is the very significant effect limits can have on the expectations about whether dairying can continue in many catchments. We know from research that small increments in limit setting, and the various choices that are made about how limits as set and measured, can have 'tipping point' implications where on site mitigation will not deliver limits. Where this occurs that can be serious implications for dairying and for local and national economies. Limits need to be set having thoroughly assessed impacts. For that reason, DairyNZ considers that the justification report that we say should apply to local authority	**52 Criteria for decisions relating to environmental limits** *Decisions to which this section applies* (1) This section applies to the Minister before deciding to— (a) set a human health limit: (b) select an attribute for a human health limit or an ecosystem health limit: (c) set a management unit for a domain or an attribute: (d) specify a methodology for setting a management unit: (e) specify a methodology for setting an ecosystem health limit: (f) specify a methodology for selecting an attribute of an ecosystem health limit. (2) This section applies to a regional council before deciding to— (a) set an ecosystem health limit: (b) select an attribute for an ecosystem health limit if that attribute is not already set in national standards: (b) set a management unit for a domain or attribute if that management unit is not already set in national standards. (3) Any decisions to which subsections (1) and (2) relate must be supported by a justification report, and section 108

	limit setting should also apply to the Minister when setting national standards	applies to decisions in subsection (1) as if references to regional council were references to the Minister. *Decision-making ~~criteria~~ principles* ~~(3) A decision maker must prioritise the most urgent and important matters and, for that purpose, must—~~ ~~(a) consider—~~ ~~(i) the extent, scale, and impacts of any environmental degradation; and~~ ~~(ii) the trend, direction, and pace of the degradation; and~~ ~~(iii) the difficulty in reversing the degradation if action is delayed; and~~ ~~(b) decide the most appropriate response in light of that consideration.~~ (4) When making decisions under section 52 in relation to ecosystem health limits, the following principles apply: (a) An ecosystem health limit may be: (i) Qualitative (descriptive) or quantitative (numerical); (ii) Set at different levels for different management units; (b) Qualitative (descriptive) ecosystem limits should be preferred over quantitative (numerical) environment limits where there is scientific uncertainty regarding the level at which an ecosystem limit should be set to achieve the goals in section 11 and the objectives in national instruments. (c) The progress in a management unit against an ecosystem limit must be able to be assessed. (d) In relation to controls on farming activities to achieve environmental limits, prioritise the use of (i) then (ii) then (iii):

		(i) non-regulatory methods specified in an action plan: (ii) freshwater farm plans: (iii) rules in a natural environment plan. (5)-(7) – retain as proposed.
54 – Specifying methodologies for setting ecosystem health limits	DairyNZ is concerned that cl 54, in conjunction with clauses 52, 55 and 56 establish a decision-making formula for establishing a methodology for setting environmental limits that is skewed towards achieving ecosystem health outcomes regardless of cost. This is evident in the inherent hierarchy within cl 54 that requires 'capacity of the environment' and the 'impact' of the proposed limits to be considered, while the council must be satisfied that the purpose of the ecosystem health limit will be achieved. This implies that even if the cost is extremely high, that cost must be borne if that is required to achieve the 'purpose' of an ecosystem health limit. In short, having to achieve the purpose of the limit is the trump card. Clause 46 sets out the 'purpose' of the ecosystem limit as being to '*protect the life-supporting capacity of the natural environment*' While DairyNZ agrees that protecting the life-supporting capacity of the natural environment is a bottom-line, we are also conscious that life supporting capacity is a *concept*, and seldom scientifically definable point (until made such through the setting of a limit).	**54 Specifying methodologies for setting ecosystem health limits** (1) The Minister must make national standards that specify a methodology that regional councils must follow when setting an ecosystem health limit. (2) Before making the national standards, the Minister must, in addition to the requirements of section 52— (a) consider the existing capacity of the natural environment to withstand or recover from pressure and disturbances in accordance section 57; and (b) consider the impact of the proposed methodology in accordance with section 56; and (c) ~~be satisfied~~ consider ~~that the proposed~~ what methodology would most appropriately support~~s~~ the purpose of the ecosystem health limits (to protect the life-supporting capacity of the national environment). (3) National standards— ~~(a) may specify whether an ecosystem health limit must be expressed only as a state attribute or a stress attribute; and~~ (b) may specify minimum acceptable levels for ecosystem health limits; but (c) must not determine an ecosystem health limit itself.

		(4) However, a lack of scientific certainty is no reason to delay making the national standards or not to make the standards.
55 - Developing ecosystem health limits	As above.	**55 Developing ecosystem health limits** (1) Before determining an ecosystem health limit, a regional council must, in addition to the requirements of section 52,— (a) consider the existing capacity of the natural environment to withstand or recover from pressure and disturbances in accordance with section 57; and (b) consider the impact of the proposed limit in accordance with section 56; and (c) ~~be satisfied~~ consider what ~~that the proposed~~ limit would most appropriately achieve~~s~~ the purpose of ecosystem health limits. (2) However, a lack of scientific certainty is no reason to delay making the standard or not to make the standard.
56 - Assessing impact of proposed environmental limit or methodology	This clause uses the term "over-allocation" (it is used in two other clauses of the Bill). That term is not defined. Use of the term in cl 67 suggests it may be intended to mean something different from "breach of an environmental limit" but that is not clear. In the absence of an obvious need for this separate term, DairyNZ proposes that it be removed and reliance placed on the more commonly used phrase "breach of environment limit". Although subclause (d) requires that the benefits of current and future use of natural resource s be considered, it does not	**56 Assessing impact of proposed environmental limit or methodology** A consideration of the impact of a proposed environmental limit or methodology requires the regional council to prepare a report under section 108 and include in that report an assessment of— (aa) the existing land use and level of investment in that land use within the management unit: (a) the positive, adverse, actual, potential, and cumulative effects of the proposed limit or methodology on ~~either of~~ the following ~~(as applicable):~~

	refer to consideration of the costs of the limits. As noted earlier in the submission the costs of limits can be very significantly and need to be specifically considered.	(i) on the life-supporting capacity of the natural environment: (ii) human health: ~~(b)~~ (iii) the needs or aspirations of communities for the economy, society, and the natural environment: (c) the magnitude and spatial extent of— (i) any ~~over-allocation of national resources~~ breach of environmental limit; and (ii) any natural resources likely to be available for allocation as a result of the proposed limit or methodology: (d) the implications of the proposed limit for the current and future use of natural resources, ~~and~~ the benefits associated with that use, and the costs of the limits, for individuals and communities: (e) the efficacy and cost of available methods to manage effects within the proposed limit: (f) alternative ways of providing for natural resource use that are consistent with protecting or enhancing the natural environment, including any alternative locations for natural resource use if the proposed limit allows for environmental degradation.
57 - Assessing existing capacity of natural environment	DairyNZ does not consider cl 57 to be necessary. An understanding of the existing capacity of the natural environment to withstand or recover from pressure and disturbances will be achieved through a wide range of	Delete Clause 57

	information (including national and local research/studies). We consider the list provided in cl 57 to be of modest value. Moreover, given that existing capacity is by definition about what exists now, several of the matters listed seems misplaced. These include 'history of previous limits' (subclause (b)) and prediction for 'likely future change' (subclause (d)). Underlying the notion that there is a discernible 'existing capacity' is the conceptual notion that there is some inherent assimilative capacity that cannot be breached and that we need to ascertain what that is through some form of historical or scientific enquiry. However, in most cases, defining 'capacity' of a resource cannot be a purely a scientific exercise. We need to detect how much impact is tolerable based on normative values. In other words, the 'capacity' for resource use is what we choose to set it as based on the full range of values in play (including environmental, social, cultural and economic). DairyNZ believes that communities should be able to set the 'capacity' to reflect existing land use.	
59 – Best obtainable information	Although 'information' is a broad term, DairyNZ considers that it would be helpful to confirm that the term "best obtainable information" applies to information relating to social and economic costs as well and environmental impacts and risks. It is also important to reinforce the principle that the effort functionaries should devote to obtaining information must be related to the degree of potential effect. Limits that are likely to have small scale impacts or affect few people should be subject to information requirements different from limits that	**59 Best obtainable information** (1) In this subpart, the best obtainable information means information regarding the social, economic cultural and environmental effects of a draft or final environmental limit that the decision maker is satisfied— (a) is as robust, transparent, and accessible as reasonably possible; and (b) is obtained from information that is available or can be reasonably obtained at the time; and

	have a significant effect on hundreds of existing dairy farms (for example).	(c) is obtained in a manner, and to a level of detail, that is proportionate to the effects of the decision. (2) When considering whether information is the best obtainable information, the decision maker must be guided by any criteria prescribed in regulations but is subject to section 52(5).
60 – Tools for managing resources to which limits apply	The provision creates a preference to caps which will often not be feasible to set and apply. Wording that more neutrally provides for caps but acknowledge that will not always be feasible is more appropriate and will better reflect the reality of resource management.	**60 Tools for managing resources to which limits apply** (1) A regional council must manage every natural resource that is subject to an environmental limit. (2) The tools for managing a natural resource that is subject to an environmental limit are as follows, and must be used by a regional council in accordance with this section and any requirements in national standards: (a) a cap on resource use: (b) an action plan: (c) both paragraphs (a) and (b). (3) A regional council must ~~give first preference to only using a cap on resource use unless~~ not use a cap where— (a) the council considers, in accordance with any criteria prescribed in regulations, that it is not effective or feasible to do so; or (b) national standards direct ~~otherwise~~ a cap not be used. (4) Without limiting subsection (3)(a), a regional council may consider that a cap on resource use is not feasible because: (a) the resource is affected by a range of different causes; (b) there is scientific uncertainty about the level of cap required to achieve the limit; or

		(c) there is no practicable means to measure whether a cap is achieved.
61 - National standards may require action plan, cap on resource use, or both	DairyNZ considers that there should be some minimum process requirements for the preparation of action plans.	**61 National standards may require action plan, cap on resource use, or both** For the purpose of ensuring compliance with an environmental limit or remedying a breach of an environmental limit, national standards— (a) may require a regional council to manage a natural resource use by preparing and implementing an action plan, a cap on resource use, or both; and (b) may specify— (i) the process for setting a cap on resource use, which must include engagement of those persons likely to be affected by the action plan; and (ii) how and when a cap on resource use must be set; and (c) may specify— (i) minimum requirements for the content of the action plan; and (ii) the process for developing the action plan; and (iii) how and when the action plan must be implemented and monitored.
62 – Cap on resource use	As noted earlier, while DairyNZ does not oppose the idea of caps, it predicts that these will be difficult to set and apply in practice. As a result, there may be few of them. We understand that caps are intended to apply at the scale of the management unit as opposed to the property scale. We agree with that since caps at the property scale are generally	**62 Cap on resource use** (1) A cap on resource use— (a) describes the maximum amount of resource use that can occur without breaching an environmental limit; and

	not feasible to measure (particularly for diffuse discharges). This point should be clarified. When describing output caps, the example of an annual discharge cap is given. DairyNZ considers this an inappropriate and unnecessary example for multiple reasons but predominately because nitrogen is generally only one factor in whether ecosystem health limits are met. For that reason, it may not be a feasible cap in accordance with Cl 60. We propose that the example be deleted. The words *"volume or rate of a contaminant discharge"* clearly describe what is intended without the need to refer to a particular contaminant.	(b) informs the maximum quantum of resource use that a regional council may allocate through plan rules and permits; and (c) may be expressed in terms of— (i) a land use (such as the extent of an activity): (ii) an input (such as an amount of fertilizer that may be applied): (iii) an output (such as the volume or rate of contaminant discharge, ~~for example, an annual discharge cap~~); and (d) may apply to all or part of a management unit, but may not apply at the scale of an individual property or farm. (2) A regional council must publish caps set on resource use on its internet site. (3) When setting a cap, a regional council must assess the impact of the cap by following the process in section 56 in relation to environmental limits.
63 - General content of action plans	As noted above, the status of, an action plan is unclear. An action plan is defined as a plan including "regulatory measures" (Clause 45). In Clause 62, an action plan may include matters relating to "*decision-making on applications*", "*the preparation of rules*" and "*caps on resource use*". Subclause (3) says that an action plan may include "*any other intervention it considers would assist*". Clause 64 implies action plans can contain controls on land use or inputs. Clause 67 suggests action plans may contain *"controls in land use or inputs"*. According to cl 97, a regional council must make decisions so that a natural resource plan *"implements any agreed action in an action plan*". Clause 156 states that when	**63 General content of action plans** (1) An action plan may set out matters relating to— (a) the establishment of non-regulatory measures including catchment groups, works and services, industry programmes, research and monitoring and financial support and incentives; and (b) recommendations relating to regulatory measures including: (i) decision-making on applications for natural resource permits; and (ii) the review of conditions of permits; and

	considering a permit application a council must *have regard to any relevant matter specified in an action plan*. We have struggled to understand the status of action plans but assume that, despite the references to regulation in the various clauses referenced above, the action plan has no direct coercive/regulatory authority of its own (evidenced by the restrictions on use of natural resources in clause 17-24 not referring to an action plan), but they do have policy/direction setting authority. The concern is that an action plan appears not to be subject to the sort of process we would expect for a document with the direction-setting power it supposedly has. That is, there may be no opportunity for submissions on a draft action plan, no hearings or opportunity for appeal. As we have already noted in our submission on cl 60, that is inappropriate. For that reason, while we support action plans we consider the content of such a plan should have no regulatory or policy effect until it has been subject of the Schedule 3 process under the Planning Act.	(iii) the preparation of rules in a natural environment plan; and (iv) caps on resource use; and (v) environmental limits (2) An action plan must— (a) set out any other matters required by national standards; and (b) be consistent with national standards. (3) A regional council may include in its action plan a commitment to, or recommendation for, any other intervention it considers would assist in achieving the purpose of the action plan, including interventions by other authorities, entities, or persons under other legislation. (4) When a natural environmental plan or any of its provisions becomes operative and relates to the subject matter of an action plan, the regional council must consider whether to update the action plan in order to reflect the natural environmental plan or provisions that have become operative.
64 – Consideration before action plans can include controls on land use or inputs	This section is confusing and unhelpful because it implies that action plans have their own coercive powers of regulation. However, the absence of reference to action plans in the 'restrictions on use of natural resources' set out in clauses 17-24 mean that is not the case. Reference in this section to *"including controls on land use or inputs"*, must mean the intention or recommendation to include such rules in a natural environment plan. It would be quite inappropriate for an action plan that is subject to no	**64 Considerations before action plans can ~~include~~ recommend controls on land use or inputs** (1) This section applies if a regional council prepares an action plan for one of the following purposes: (a) to avoid breaching an environmental limit: (b) to remedy a breach of an environmental limit. (2) An action plan must not include recommend controls on land use or inputs caps on resource use unless the regional

	proper development process to include "controls" or even a commitment to controls that then must be mandatorily implemented by a natural environment plan (as required by cl 156). A secondary issue with this clause is that the bar on action plans including certain controls (ie types of caps) where other methods will be adequate does not apply to controls on outputs. There can be no rational justification for that exclusion. The term caps is used to described all three types of control and should be used here.	council is satisfied that the following measures will not be sufficient to achieve the purpose of the action plan: (a) national standards: (b) existing rules in a natural environment plan: (c) freshwater farm plans: (d) non-regulatory measures. (3)In this section, controls on land use or inputs means rules in a natural environment plan that restrict or determine how land is used and what it can be used for (for example the type of forestry planting, construction or use of urban or built areas, or fertiliser application rates).
65 – Requirements for action plans to remedy breach of environmental limits	The clause requires the setting of 5 yearly interim targets where the target date to achieve a limit is more than 10 years from the data the action plan commences. While the requirement of interim targets to be "credible, achievable and avoid unnecessary delay" is supported, the idea that an action plan can set and limits that cannot be achieved within 10 years is not. That long term approach encourages the setting of unachievable limits based on assumptions that achieving limits will become tractable in future decades. Later plans can always reassess whether more improvement is required/practicable and set new targets when feasible to do so. In any event, limits and targets are matters that should be included in the natural environment plan not the action plan.	~~**65 Requirements for action plans to remedy breach of environmental limits**~~ ~~If the purpose of an action plan prepared by a regional council is to remedy a breach of an environmental limit, —~~ ~~(a)the council must set a date by which compliance with the limit must be achieved (the target date); and~~ ~~(b)if the target date is more than 10 years after the commencement of the action plan, —~~ ~~(i)the plan must contain a series of interim limits at intervals of no more than 5 years; and~~ ~~(ii)each interim limit must state actions and outcomes to be achieved within a specified time frame; and~~

	Finally, different domains and attributes may require a different approach to the timescale at which environmental limits are set. These differences (and the different timescales) are best addressed in national standards.	~~(c) the target date and, if applicable, each interim limit and specified time frame must be credible, achievable, and avoid unnecessary delay.~~
Subpart 5 - National Instruments	One of the intentions with the Bill is to create consistency and standardisation. We support this intent, and also believe that it is imperative to create enduring policy solutions, including for any national instruments developed under the Bill. Even though we support the intention to enable a faster process for the development of national instruments, this also come with the potential to create less certainty for farmers if changes happen too fast, often or easily, or with too little justification for those changes. To alleviate this, we believe there needs to be some further procedural and decision-making principles included in subpart 5. DairyNZ proposes some targeted changes to alleviate our concerns.	Amend according to proposal in specific clauses
69 - Matters to consider when making national direction	The considerations listed in Subclause 2 give inadequate assurance that social and economic costs will be given appropriate regard in setting national direction because: • Provided a limit is set (and regardless of the level that is set), any level of resource use enablement, no matter how restricted, satisfies goal of cl 11 (a). • Subclause 2 allows goal (a) of cl 11 (the only goal that allows for the consideration of social and economic costs) to not be achieved in any particular ministerial decision. • No direct reference is made to the obligation to consider effects in cl 14 (although subsection (4)	**69 Matters to consider when making national direction** (1) This section applies to the Minister when making a national instrument. (2) The Minister must have regard to the following principles: (a) achieving compatibility between the goals is to be preferred over achieving one goal at the expense of another: (b) not all goals need to be achieved in all places at all times: (c) any conflicts within the proposed national instrument should be resolved in that document as far as reasonably practicable.

	states that the Minster's consideration of adverse effects is subject to sections 14 and 15(1)). Although a Minister may decide to set aside concerns about social and economic costs, the nature and scale of those costs should always be considered before a decision is made.	(d) the positive and adverse effects of the proposed national instrument must be considered.
70 - Process for making national instrument	We propose a consequential amendment to clause 70(2)(a) to link the principle introduced in clause 69 (2) for the Minister to have regard to economic, social, cultural and environmental benefits of a national instrument, and for this to be set out in report accompanying a notification of the national instrument. We believe that this will increase the understanding of what the introduction of a national instrument will mean more holistically and robustly compared to the proposed drafting in the Bill as consulted on.	**70 Process for making national instrument** (2) If after having complied with subsection (1), the Minister proposes to issue a national instrument, the Minister must establish and follow a process that includes the following steps: (a) the public and iwi authorities must be given notice of— .. (vi) a report summarising the assessment of the matters outlined under clause 69 (2)(d): and
74 - Approval of national instrument	Amend subclause 2 to ensure changes to a national instrument is based on previous reports (as required by clause 69 and 70) and recommendations from the chief executive as set out in clause 70(5).	**74 Approval of national instrument** (1) The Governor-General in Council may, on the recommendation of the Minister, approve a national instrument. (2) Before recommending that a national instrument be approved after having complied with section 70, the Minister must— (a) first, must consider the report and any recommendations made under section 70; and (b) secondly, may -

		(i) make any changes, or no changes, to the proposed national instrument ~~as the Minister thinks fit~~ based on the report and recommendations; or (ii) withdraw all or part of the proposed national instrument and give public notice of the withdrawal, including the reasons for the withdrawal.
87 - National standards or regulations may set operational details for market-based allocation process	We recommend deferring the introduction of broader market tools for natural resource allocation, particularly for water quality, until further assessment is completed. Evidence in Section 2 shows that market-based allocation faces major constraints, including the inability to accurately attribute contaminants at farm scale, weak measurability and causal certainty, and high monitoring and information costs. Small market size, weather driven variability, and limited participants further prevent prices from reflecting true environmental impacts. Experience in systems such as the Murray–Darling basin also raises concerns about the efficiency and equity of large-scale water-quality markets. Deferral provides space to determine whether these tools can genuinely deliver efficient and fair outcomes without imposing undue costs or risks.	Delete Clause 87 *Consequent amendments required to clauses 204 - 207*
97 - Core obligations when preparing and deciding	Given there is no checks and balances on the process for 'agreeing action' the requirement to implement them in a natural environment plan is inappropriate. In the alternative,	**97 Core obligations when preparing and deciding natural environment plan** (1) This section sets out the core obligations that apply when—

natural environment plan	regional councils should only be required to 'have regard to' action plans, not 'implement' them, which is a more onerous standard. Actions of an action plan could be considered on their merits.	(a) regional council is making a decision on a matter that a national instrument expressly authorises it to make, in relation to if and how it incorporates a standardised plan provision into its plan or proposed plan (see sections 72 and 95); and (b)a regional council is preparing or deciding a bespoke plan provision (see section 96). (2) A regional council must make its decisions in accordance with its responsibilities and functions under sections 221 to 223 so that the resulting natural environment plan— (a) implements— (i) the national policy direction; and (ii) any national standard; and (iii) any relevant provision in a regional spatial plan; ~~and~~ ~~(iv) subject to paragraphs (i) to (iii), any agreed action in an action plan; and~~ (b) ensures that 10-year environmental limits are complied with; and (c) is not inconsistent with a water conservation order. (3)-(5) as proposed
100 - Rules relating to market-based allocation process or comparative	We recommend deferring the introduction of broader market tools for natural resource allocation, particularly for water quality, until further assessment is completed. Evidence in Section 2 shows that market-based allocation faces major constraints, including the inability to accurately attribute contaminants at farm scale, weak measurability and causal certainty, and high monitoring and information costs. Small	Delete Clause 100

permitting process	market size, weather driven variability, and limited participants further prevent prices from reflecting true environmental impacts. Experience in systems such as the Murray–Darling basin also raises concerns about the efficiency and equity of large-scale water-quality markets. Deferral provides space to determine whether these tools can genuinely deliver efficient and fair outcomes without imposing undue costs or risks.	
106 – Requirements for evaluation reports	The proposed amendments prioritise non-regulatory methods and FWFPs above rules in a proposed plan. The stated aims of the Government are to decrease regulation and consenting. Councils should be given clear guardrails, which identify the Government's priorities. Those priorities align with DairyNZ's experience as to how farming is best managed, which is explained in the first part of the submission. Specific changes are proposed to subclause (4): • The chapeau does not reference "output controls". It should. DairyNZ is not aware of a valid rationale for separating output controls from input controls and land use controls. All three of these types of rule are important and can have very significant effects farming activity (and resources management in general). Subclause (4)(c) does not make sense as drafted. Predecessor RMA plans will cease to have any effect once first generation natural environment plans have been notified. Comparing the rules of a first generation natural environment plan (if that is what is proposed) to the former regional plan is unnecessary. However, the rules in of first generation natural environment	**106 Requirements for evaluation reports** (1) An evaluation report required under clause 10 of Schedule 3 of the Planning Act 2025 for a draft of a proposed plan must set out how the draft proposed plan implements— (a) the relevant spatial plan; and (b) any applicable national policy direction; and (c) any applicable goal to the extent permitted by section 12(4). (2) The evaluation report must— (a) summarise the regional council's reasons for selecting any standardised provision from a national standard, if a national standard authorises or requires the regional council to choose between any 2 or more alternative standardised provisions; and (b) state how, if at all, the draft has been influenced by— (i) pre-notification consultation (*see* clause 5 of Schedule 3 of the Planning Act 2025); and (ii) any other engagement with local communities. (3) If the proposed plan includes rules that controls fishing in the coastal marine area, the evaluation report must also include

	plans could be relevant to the rules of second generation natural environment plans (or a plan change to the natural environment plan). The proposed changes to (4)(c) reflect these process considerations.	an assessment of the impact of those rules prepared in the prescribed manner. (4) If the proposed plan includes a land use control, ~~or~~ input control or output control for the purpose of ensuring compliance with an environmental limit, prioritise the use of (a) then (b) then (c): ~~the evaluation must examine and explain why the following measures are not sufficient to ensure compliance with the limit~~: (a) non-regulatory methods specified in an action plan: (b) freshwater farm plans: (c) the other ~~any~~ rules in the proposed plan or ~~an~~ the rules in the operative natural environment plan (if there is one in place). (4A) If the regional council considers subsection 4(a) or 4(b) are not sufficient to ensure compliance with the limit, then the evaluation report must explain why not. (5) The evaluation report— (a) must contain sufficient detail to identify the key content in a draft proposed plan; but (b) is not required to individually address every objective, policy, rule, or method in the draft.
108 – Requirements for justification report	From the DairyNZ perspective, setting ecosystem limits will be the singularly most important function of regional councils. Ecosystem limits have critical effects on dairy farming. If a limit is more stringent, less stringent, or even the same but expressed differently compared with the national standard (minimum acceptable level), then the regional council needs to justify its approach. Failing to do so means failing to	**108 Requirements for justification reports** (1) This section sets out the requirements for a justification report required under clause 11 of Schedule 3 of the Planning Act 2025 for a draft of a proposed plan that contains— (a) a bespoke provision; or (b) a provision on a specified topic; or

	consider properly the true costs and benefits of an ecosystem limit. The proposed amendments also prioritise non-regulatory methods and FWFPs above rules in a plan. For further detail, see the commentary relating to clause 106 above.	(c) ~~a provision to which section 51(4) applies (which relates to less stringent ecosystem health limits)~~ any ecosystem health limit and any caps under section 62. (2) In relation to a bespoke provision, a justification report must— (a) justify why the provision is either— (i) expressly authorised by a national instrument; or (ii) not precluded by the national instruments; and (b) describe the positive and negative impacts of the provision; and (c) assess the costs and benefits of the provision, including any costs and benefits from the provision or reduction of development capacity; and (d) state how the regional council proposes to monitor the effectiveness of the proposed provision; and (e) summarise the evidence for its view that section 97(3) applies, if the regional council is proposing that the bespoke provision will not give effect to any provision in the regional spatial plan in accordance with that section; and (f) state how, if at all, the draft has been influenced by— (i) pre-notification consultation (see clause 5 of Schedule 3 of the Planning Act 2025); and (ii) any other engagement with local communities. (3) In relation to a provision on a specified topic, a justification report must— (a) identify which specified topic the provision relates to; and

		(b) justify why the provision is not precluded by national instruments; and (c) describe the area to which the provision applies; and (d) assess the extent to which the provision is appropriate in relation to the cultural or natural values associated with that area; and (e) describe the key data and evidence that has informed the proposed provision, including the spatial application of the proposed provision; and (f) include the matters in subsection (2)(b) to (e). (4) In relation to an ecosystem health limit and any other provisions that affect the achievement of an ecosystem health limit ~~that is less stringent than the minimum acceptable level specified in national standards~~, a justification report must-- ~~comply with the prescribed requirements.~~ (a) Prioritise the use of (i) then (ii) then (iii): (i) non-regulatory methods specified in an action plan: (ii) freshwater farm plans: (iii) any rules in an operative natural environment plan. (b) If the regional council considers subsection 4(a) or 4(b) are not sufficient to ensure compliance with the limit, then the justification report must explain why not. (c) describe the positive and negative impacts of the provision including positive economic and employment impacts and the value of existing investment; and

		(d) assess the costs and benefits of the provision, including any costs and benefits from the provision or reduction of development capacity; and (e) state how the regional council proposes to monitor the effectiveness of the proposed provision; and (f) state how, if at all, the draft has been influenced by— (i) pre-notification consultation (see clause 5 of Schedule 3 of the Planning Act 2025); and (ii) any other engagement with local communities; (g) give effect to the principles in 52A(8). (5) The justification report must contain a level of detail that corresponds to the scale and significance of the content of the draft proposed plan.
156 - Consideration of natural resource permit application	Because there is no guarantee that an action plan will have gone through a process that includes consultation, hearings and appeal rights, it is not appropriate for such plans to have a role in permitting.	**156 Consideration of natural resource permit application** (1) Subject to subsection (3), a permit authority must have regard to the following: (a) any adverse effect on— (i) a person, unless section 155(1)(a) applies: (ii) the natural environment: (b) any effect that is— (i) positive: (ii) cumulative: (c) any measure proposed or agreed to by the applicant to avoid, remedy, minimise, offset, or compensate for, any adverse effects on the natural environment resulting or likely to result from the activity: (d) any relevant provisions of— (i) the natural environment plan or proposed plan:

		(ii) the regional spatial plan or proposed regional spatial plan, if the application is for an activity that is a discretionary activity: (e) any relevant provisions of other key instruments in accordance with section 12: ~~(f) any relevant matter specified in an action plan:~~ (g) if the application is affected by section 181(a) (which applies section 164 of the Planning Act 2025), the value of the investment to the existing permit holder: (h) if the application is affected by section 181(a) (which applies section164 of the Planning Act 2025) in relation to long-lived infrastructure, the effects of that infrastructure: (i) the matters specified in sections 157 to 164. (2) If the activity is a natural resource use activity, the permit authority may, in its discretion, consider any adverse effect of the activity on natural resources and people regardless of whether the natural environment plan or a national rule permits an activity with that effect. (3) However, if a natural resource permit application is for an activity that is a restricted discretionary activity, a permit authority may have regard to a matter only if discretion is reserved in relation to that matter by any of the following: (a) a natural environment plan or proposed natural environment plan: (b) a national rule: (c) a water services standard. (4) This section also applies to a permit authority considering any submissions on the application.

157 - Matters relevant to activities affecting drinking water supply source water	This clause requires a consent authority to have regard to the actual or potential effects of the proposed activity on the source of a drinking water supply registered under S55 of the Water services Act 2021. This includes 'any risks' that the proposed activity may pose to the source of a drinking water supply identified in a source water risk management plan. Source water risk management plans identify 'any hazards and any risks' as a part of their plan where they are then managed based on the level of risk they pose. DairyNZ seeks tightening of wording in 157 (b) to ensure an appropriate level of risk is considered.	**157 Matters relevant to activities affecting drinking water supply source water** The permit authority must have regard to— (a) the actual or potential effect of the proposed activity on the source of a drinking water supply that is registered under section 55 of the Water Services Act 2021; and ~~any~~ **the actual or potential** ~~may~~ pose<u>s</u> to the source of a drinking water supply that are identified in a source water risk management plan prepared in accordance with the requirements of the Water Services Act 2021.
166 - Precautionary principle where information uncertain or inadequate	Clause 166 places the costs and risks of providing information on the farmer where there is not sufficient certainty. Given the complexity of natural resource systems there may be farming situations where the information cannot be provided, this may be unnecessarily prohibitive and costly. We seek amendments to ensure appropriate weight is given this would be problematic for farming activities.	**166 Precautionary principle where information uncertain or inadequate** 1. When deciding whether to grant or refuse an application for a natural resource permit, a permit authority must favour caution and environmental protection if the information available to determine the application is uncertain or inadequate. 2. However, if applying subsection (1) means that the application is likely to be refused, the permit authority must consider a. <u>the scale and likely impact of the activity on natural resources, or</u> b. whether including a condition that requires, or conditions that form, an adaptive

		management approach would address the concerns arising from the uncertainty or inadequacy of the information.
167 - Permit authority may grant application with adaptive management approach	Our proposed amendment ensures that the clause sets out the matters that must be considered, rather than matters that must be required or allowed. This distinction is important, as it provides councils with the flexibility needed to respond to the specific context of different activities. If clause 167 is amended to give councils greater discretion, it would create a more workable pathway for farming activities to operate under what is currently an infrastructure- or industrial-style consent framework, provided the relevant conditions can be met. This would better reflect the practical realities of rural land use. Finally, any adaptive management approach should be proportionate to the level of risk. Ensuring proportionality will support effective environmental outcomes without imposing unnecessary or impractical compliance burdens.	**167 Permit authority may grant application with adaptive management approach** ... (2) An adaptive management approach can be tailored to the permit but must consider including the following — ...
266 - Scope of abatement notice	Case law supports "satisfied" sets a higher threshold under the RMA. DairyNZ believes that abatement notices are often issued in circumstances that do not reflect the actual level of breach or risk on farm. This issue is significant given recent increases in penalties for environmental breaches.	**266 Scope of abatement notice** ... (4) An abatement notice shall not be served unless the enforcement officer is satisfied ~~has reasonable grounds for believing~~ that any of the circumstances in subsection (1) or subsection (2) exist. ...

267 - Compliance with abatement notice	Insert a provision requiring periodic review of abatement notices. DairyNZ is concerned that current practice in issuing abatement notices for farming activities (carried over into the two Bills) does not provide for reassessment of whether a notice remains necessary or proportionate. As drafted, there is no obligation on a compliance officer to review or withdraw a notice, leaving farmers to initiate removal and often unaware of the notice's status or implications. A notice that remains in force without the farmer's full understanding does not support behavioural change. A review clause would ensure the notice remains relevant to the offence or risk, improve transparency for farmers, and allow councils to clearly communicate any ongoing concerns.	**267 Compliance with abatement notice** (1) A person on whom an abatement notice is served must— (b) comply with the notice within the period specified in the notice; and (b) (b) unless the notice directs otherwise, pay all the costs and expenses of 10 complying with the notice. (2) This section is subject to the rights of appeal in section 269. (3) An abatement notice ceases to have effect [3] years after the notice issued under section 266 or confirmed under section 271, unless the relevant authority has served notice that it is satisfied section 266(4) continues to apply. *(Consequential changes to 271 are also sought)*
271 - Cancellation of abatement notice	Consequential changes to those sought under clause 267.	**271 Cancellation of abatement notice** (8) Notwithstanding subsections (1)-(7) above, an abatement notice ceases to have effect [3] years after the notice being issued unless the relevant authority is satisfied section 266(4) continues to apply.
278 - Offences against this Act	Councils will often issue abatement notices before prosecuting for a breach of the RMA. Councils will add the breach of the abatement notice to the charges without a clear rationale as to why that should be prosecuted as an offence distinct from the original offence. That practice has the effect of increasing penalties without a clear rationale.	**278 Offences against this Act** (1) A person commits an offence against this Act if the person contravenes, or permits a contravention of, any of the following: (a) sections 17, 18, 19, 20, and 21 (which impose duties and restrictions in relation to the coastal marine area,

		the beds of certain rivers and lakes, water, and discharges of contaminants): (b) any enforcement order: (c) any condition of a natural resource permit: ~~(d) any abatement notice:~~ (e) any monetary benefit order made under clause 29 of Schedule 8 of the Planning Act 2025:
281 - Liability of principal for acts of agents	The use of "all reasonable steps" creates a very high bar and results in a difficult test to satisfy. DairyNZ recommends amendments to "reasonable steps" which recognises that the judgement made to determine liability occurs in hindsight. In practice we would expect there to be a disconnect between what a farmer has undertaken as taking all reasonable steps and what a council officer would in hindsight determine as all reasonable steps. The changing in wording reflects this issue.	**281 Liability of principal for acts of agents** ... (2) Person B is liable for the offence as if person B had personally committed it, if 35 it is proved that person B— (a) authorised or consented to the act constituting the offence; or (b) knew the offence was, or was to be, committed and failed to take ~~all~~ reasonable steps to prevent or stop it. ... (A) If proceedings are brought against person B under subsection (2), person B has a good defence if— (a) person B proves,— (i) in the case of a natural person (including a partner in a firm),— (ii) that person B did not know, and could not reasonably be expected to have known, that the offence was to be or was being committed; or

		(A) that person B took ~~all~~ reasonable steps to prevent the commission of the offence; or (iii) in the case of a person other than a natural person,— (A) that neither the directors (if any) nor any person involved in the management of person B knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or (B) that person B took ~~all~~ reasonable steps to prevent the commission of the offence; and (b) person B proves that they took ~~all~~ reasonable steps to remedy any effects of the act or omission giving rise to the offence (5) If a person other than a natural person is convicted of an offence against this Act, a director of the defendant (if any), or a person involved in the management of the defendant, is guilty of the same offence if it is proved— a. that the act or omission that constituted the offence took place with the person's authority, permission, or consent; and (b) that the person knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take ~~all~~ reasonable steps to prevent or stop it.

287 - Insurance against fines unlawful	DairyNZ opposes the restrictions on insuring against fines. We agree it is not appropriate for insurance to cover fines arising from intentional breaches or actions taken for commercial gain. Penalties must deter deliberate or negligent non-compliance. However, dairy farming operates within complex and variable environmental conditions, many of which fall outside a farmer's reasonable control. Strict liability offences mean that farmers can incur penalties even when well-maintained systems fail unexpectedly due to equipment malfunction, staff error, or severe weather. Prohibiting insurance cover for fines creates a risk of disproportionately punitive financial consequences for unintentional events. Insurance plays an important role in managing these uncontrollable risks and supports continued investment in environmental infrastructure. Dairy farming is capital-intensive, and the ability to insure against inadvertent breaches provides financial certainty that enables further investment in mitigations such as effluent storage and discharge systems. Insurers already incorporate compliance history into premium assessments. Removing the ability to insure against fines is therefore unnecessary and risks undermining farmers' capacity to invest in improved environmental performance.	Delete clause 287

313 - Regulations relating to natural resource levies	DairyNZ recognises that levies require less precision than market-based tools, but we do not consider them sufficiently accurate or appropriate for wide application at this stage. The proposed provisions are not directly linked to the actual resource use or pollution and more of a general charge across all polluters regardless of contribution, not leading to a cost-efficient decrease in pollution or increased resource use efficiency. We therefore support deferring their introduction in the Bill until further work is completed on their feasibility, impacts, and implications for both water quality and water quantity. This should include an assessment of their effects on dairy farmers.	Delete clause 313
314 - Conditions to be satisfied before regulations made under section 313	As per clause 313.	Delete clause 314
315 - Regulations relating to moneys collected from market-based allocation mechanisms	We recommend deferring the introduction of broader market tools for natural resource allocation in legislation, particularly for water quality, until further assessment is completed. Evidence in Appendix 3 shows that market-based allocation faces major constraints, including the inability to accurately attribute contaminants at farm scale, weak measurability and causal certainty, and high monitoring and information costs. Small market size, weather driven variability, and limited	Delete Clause 315

	participants further prevent prices from reflecting true environmental impacts. Experience in systems such as the Murray–Darling basin also raises concerns about the efficiency and equity of large-scale water-quality markets. Deferral provides space to determine whether these tools can genuinely deliver efficient and fair outcomes without imposing undue costs or risks.	
333 - Collection and spending of levy under section 313(2)(a)	Consequential amendments to levy related clauses – delete and consult separately on natural resource use levies before deciding on their introduction into the Act.	Delete clause 333
334 - Collection and spending of levy under section 313(2)(b)	Consequential amendments to levy related clauses – delete and consult separately on natural resource use levies before deciding on their introduction into the Act.	Delete clause 334
335 - Collection and spending of moneys from market-based allocation mechanisms	As per submission on clause 315	Delete clause 335

Section 5: Proposed Amendments to the Planning Bill 2025

Table 4 – Amendments to the Planning Bill 2025

Clause	Submission	Proposed amendment
General	In addition to specific changes sought to provisions in this table, further changes to the Planning Act could be required to reflect the changes proposed to the NEB.	Amend provisions to align with changes sought for the NEB.
11 - Goals	Include an additional clause to ensure that the value of resources for food production, and as an extension the value of food production to the national economy is appropriately enabled. This would provide some balance to a clause primarily focused on enabling urban and infrastructure development.	**11 Goals** (1) All persons exercising or performing functions, duties, or powers under this Act must seek to achieve the following goals subject to sections 12 and 45: (a) to ensure that land use does not unreasonably affect others, including by separating incompatible land uses: ... (j) to protect the actual and potential value of land and soil for primary production. ...
13 - Procedural Principles	The drafting of this clause would benefit from minor wording changes and additional text to sharpen the intent and effect. It is also important to acknowledge that managing activities' effects on the natural environment is often an exercise in risk management since the degree of effect is typically dependent on biophysical conditions that vary spatially and temporally.	**13 Procedural Principles** (1) A person exercising or performing functions, powers or duties under this Act must ~~take all practicable steps to —~~ (a) ensure all documents are succinct and use plain language that can be readily understood by the public: (b) act in a timely, consistent, and cost-effective manner: (c) if no time limit is prescribed for exercising or performing a function, power or duty under this Act, the person responsible for the action or decision must take that action

	Also, the principles, though broadly supported, are likely to add little value unless there is some sanction for non-compliance. Accordingly, we propose that provision be made for a declaratory judgement to be sought from the Planning Tribunal. In addition, while acting in an enabling manner is supported, this appears to be a decision-making rather than procedural principle (see following submission point).	or make that decision as promptly as is reasonable in the circumstances; (d)~~(c)~~ act proportionately to the scale and significance of the risk to the environment and functions, powers and duties being exercised or performed ~~matter~~: (e)~~(d)~~ ensure they have adequate ~~enough~~ information to understand the implications of their recommendation or decision ~~(if any)~~, after considering— (i) the cost and feasibility of obtaining the information; and (ii) the scale and significance of the matter to which the decision relates: ~~(e) act in an enabling manner (for example, by being solutions-focussed) that is consistent with the principles in paragraphs (a) to (d) and section 12:~~ (f) avoid unnecessary repetition in key instruments. (2) A person may apply to the Planning Tribunal for a declaration where the principles in subsection (1)(b)-(f) have not been complied with. (3) Where a person applies for a declaration under subsection (2), the process under clause 22A of Schedule 10 of this Act will apply with all necessary modifications. (4) A local authority must report on any declarations issued by the Planning Tribunal under subsection (2) to the chief executive on a quarterly basis. *Consequential changes are required in Sch 10 of this Act. A new Clause 22A will need to be drafted (not included in this submission)*
New clause 13A	Insert new clause to address the lack of decision-making principles.	**13A Decision-making principles** (1) All persons empowered to make recommendations or decisions under this Act must—

	The Bill contains procedural principles (cl 13), principles for classifying activities (cl 31) and principles relating to when a Minister is making a national instrument (cl 45). The Bill does not, however, set out *decision-making* making principles, but it should. We propose new clause 13A be added.	(a) act in an enabling manner in accordance with subsections (b)-(e) and sections 11-13; (b) manage adverse effects including cumulative effects of using and developing the environment in accordance with the goals in section 11; (c) have regard to any measures proposed to avoid, remedy, mitigate, offset or compensate adverse effects of a proposal; (d) have regard to the positive effects of using and developing the environment to achieve the goals in section 11; (e) grant applications for resource consent unless the consent authority can be satisfied there are adequate reasons not to do so; (f) prioritise the use of non-regulatory methods over regulatory methods. (2) A person may apply to the Planning Tribunal for a declaration where the principles in subsection (1) have not been complied with. (3) Where a person applies for a declaration under (2), the process under clause 22A of Schedule 10 of this Act will apply with all necessary modifications. (4) A local authority must report on any declarations made under (2) to the chief executive on a quarterly basis. *Consequential changes are required in Sch 10 of this Act. A new Clause 22A will need to be drafted (not included in this submission)*
15 - Considering adverse effects of activities	DairyNZ proposes to remove the hierarchy between avoiding, minimising and remedying adverse effects, and offsetting and compensating adverse effects. The Government has signalled an intention to provide more	**15 Considering adverse effects of activities** (1) A person exercising or performing functions, powers, or duties under this Act who is considering the effects of an activity—

	flexibility in the approach to consenting and permitting, and to encourage restoration of the natural environment. Restoration is better supported by a system that places more emphasis on offsetting and compensating. By contrast, relying on 'avoid, minimise and remedy' is a perpetuation of the status quo ('avoid, remedy, mitigate'), which has not succeeded in delivering positive environmental outcomes. DairyNZ supports the proposed wording to raise the threshold of relevant effects to "less than minor" – but would take this further by raising the threshold further to "minor effects". Minor effects are, as the name suggests, minor. That magnitude of effects is unimportant and not significant. A streamlined resource management framework need not concern itself with effects of a minor nature. It should only be concerned with matters that can have a meaningful effect on the natural environment. Those types of effects are "more than minor" effects.	(a) must consider how~~—~~ ~~(i)~~ adverse effects are to be avoided, minimised, or remedied~~, where practicable; or~~ ~~(ii) adverse effects are to be~~ offset or compensated~~, where appropriate~~. (b) must not consider a ~~less than~~ minor adverse effect unless the cumulative effect of 2 or more such effects create effects that are more ~~greater than less~~ than minor. (2) A national instrument may specify— (a) how, and in what order, adverse effects are to be avoided, minimised, or remedied, offset, or compensated; and ~~(b) when it is practicable for adverse effects to be avoided, minimised, or remedied; and~~ ~~(c) when it is appropriate for adverse effects to be offset or compensated; and~~ (d) where specific effects are managed under this Act and under the Natural Environment Act 2025. (3) If no national instrument is in force to guide or direct the use of offsetting and compensation, the management of adverse effects through offsetting and compensation: (a) must not be guided or directed by provisions of a natural environment plan; and (b) may be provided for in the context of determining an application for a permit but only if the offset or

		compensation has been proposed or agreed to by an applicant. ~~(3)~~(4) The order in which an approach to managing effects appears in this section does not assign an order of importance to how effects are managed. ~~(4)~~(5) In this section, a ~~**less than**~~ **minor adverse effect** means an adverse effect that, after any mitigation required by a condition of any applicable rule or permit, is acceptable and reasonable in the receiving environment ~~with any change being slight or barely noticeable~~.
31 - Principles for classifying activities	Amend to align the classification of activities with proposed changes to clause 15. This would give better effect to the intended aim of the reform to provide for more permitted activities.	**31 Principles for classifying activities** When exercising or performing a function, power, or duty under this Act, a person must be guided by the following principles: (a) an activity should be classified as a permitted activity wherever possible while giving effect to the goals in section 11, national instruments or regional spatial plans (as required by section 12) including in the following circumstances ~~if~~— (i) the activity ~~is acceptable~~ has (or is likely to have) effects that are minor or less than minor, is anticipated, or achieves the desired level of use, ~~and~~ development, or protection of the natural environment; or (ii) any adverse effects of the activity on the natural environment are ~~known~~ well understood and can be managed by other methods including national regulation, freshwater farm plans or non-regulatory

		methods (or some combination of those methods); or (iii) a specific assessment of the activity or part of the activity is not required: .. (e) in this section, a specific assessment of an activity's effects means an assessment required when a risk is present that is likely different from the risks typical of the activity and which cannot be managed by a standard condition.
38 - Permitted activity rules	Our concerns with this clause are the same as set out for clause 39 of the NEB. In short, the purpose of the alternative approach to registration in (1)(b) is unclear. Further, registration of all permitted activities would be unnecessarily costly and bureaucratic with little benefit for a large number of low-risk activities. We propose amendments to this clause to address these concerns.	**38 Permitted activity rules** (1A) A permitted activity rule may include one or more conditions designed to manage any adverse effect of the activity, which may include a condition described in section 151 (as if that section applied to permitted activities). (1) A permitted activity rule must— ~~(a)~~require an activity to be registered if registration is required by a national instrument or a plan.~~; or~~ ~~(b)relate to a matter described in section 151 or Part 1 of Schedule 7.~~ ~~(2) A permitted activity rule referred to in subsection (1)(a) must provide that an activity is a permitted activity only if—~~ ~~(a)the activity is registered with the territorial authority (see section 180); and~~ ~~(b)the person carrying out the activity does 1 or more of the following:~~

		~~(i)obtains the written approval of all persons who may be directly affected by the activity:~~ ~~(ii)obtains a certificate from a qualified person that the activity complies, or would comply, with any specified requirement:~~ ~~(iii)pays a fee fixed in accordance with section 192:~~ ~~(iv)complies with any other requirement relating to a matter described in section 151 or Part 1 of Schedule 7.~~ (3) A permitted activity rule referred to in subsection (1)~~(a)~~ may specify requirements for the information that must be included in the notice required by section 180. ~~(4) An approval described in subsection (2)(b)(i) is valid for 3 years from the date it is given, unless withdrawn in writing by the person who gave it.~~
Subpart 4 – National instruments	One of the intentions with the Bill is to create consistency and standardisation. We also believe that it is imperative to create enduring policy solutions, including for any national instruments developed under the Bill. Even though we support the intention to enable a faster process for the development of national instruments, this also come with the potential to create less certainty for farmers if changes happen too fast, often or easily, or with too little justification for those changes. To alleviate this, we believe there needs to be some further procedural and decision-making principles included to some of the clauses in subpart 4.	**Subpart 4 National instruments** Amend according to proposals for specific clauses.
Clause 45 - Matters to consider when	The considerations listed in Subclause 2 give inadequate assurance that social and economic costs will be given appropriate regard when developing national instruments.	**Clause 45 Matters to consider when making national instrument** (1) This section applies to the Minister when making a national instrument.

making national instrument	Although a Minister may decide to set aside concerns about social and economic costs, the nature and scale of those costs should always be considered before a decision is made.	(2) The Minister must have regard to the following principles: (a) achieving compatibility between the goals is to be preferred over achieving one goal at the expense of another: (b) not all goals need to be achieved in all places at all times: (c) any conflicts within the proposed national instrument should be resolved in that document as far as reasonably practicable. (d) the positive and adverse effects of the proposed national instrument must be considered.
Clause 46 - Process for making national instrument	We propose a consequential amendment to clause 46(2)(a) to link the principle introduced in clause 45 (2) for the Minister to have regard to economic, social, cultural and environmental benefits of a national instrument, and for this to be set out in report accompanying a notification of the national instrument. We believe that this will increase the understanding of what the introduction of a national instrument will mean more holistically and robustly compared to the proposed drafting in the Bill as consulted on.	**Clause 46 Process for making national instrument** (2) If after having complied with subsection (1), the Minister proposes to issue a national instrument, the Minister must establish and follow a process that includes the following steps: (a)the public and iwi authorities must be given notice of— . . (vi) a report summarising the assessment of the matters outlined under section 45 (2)(d): and
Clause 50 - Approval of national instrument	Amend subclause 2 to ensure changes to a national instrument is based on previous reports (as required by clause 45 and 46) and recommendations from the chief executive as set out in clause 46(5).	**Clause 50 Approval of national instrument** (1) The Governor-General in Council may, on the recommendation of the Minister, approve a national instrument. (2) Before recommending that a national instrument be approved after having complied with section 46, the Minister must— (a) first, must consider the report and any recommendations made under section 46; and (b) secondly, may -

		(i) make any changes, or no changes, to the proposed national instrument ~~as the Minister thinks fit~~ based on the report and recommendations; or (ii) withdraw all or part of the proposed national instrument and give public notice of the withdrawal, including the reasons for the withdrawal.
Part 3 - Combined plan Subpart 1—Requirement for regional spatial plans	The direction for Spatial Plans as currently proposed has a strong flow through from the environmental limits in the NEB. This could potentially lead to spatial Plans being heavily shaped by those NEB environmental limits which could effectively set a hard boundary for what growth and intensification can occur and where it can occur in the future. The strong reliance on environmental limits, and no requirement to consider social or cultural implications of spatial plans, could lead to several potential risks for dairy farming. Environmental limits will have a potential to drive land use change in the Spatial plans and/or constrain land use change and intensification, even in cases where effects of those activities are managed via the NEB and Natural Environment Plans.	Amend according to proposals for specific clauses.
67 - Purpose of regional spatial plans	Amend to constrain spatial plans to first and foremost a tool to manage urban development and infrastructure within environment limits.	**67 Purpose of regional spatial plans** A regional spatial plan must— (a) set the strategic direction for urban development and public investment priorities in a region for a time frame of not less than 30 years; and

		(b) enable integration at the strategic level of decision making relating to urban use and development and infrastructure under this Act and the Natural Environment Act 2025; and (c) implement national instruments made under this Act and the Natural Environment Act 2025 in a way that provides for use and development for urban purposes and infrastructure within environmental limits; and (d) support a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers; and (e) promote integration of urban development planning with infrastructure planning and investment.
69 - Process agreement for preparation of regional spatial plan	Clause 69 sets out the process for agreement between the local authorities on how to prepare a regional spatial plan. The section lacks clear responsibilities and roles and also has no conflict resolution pathway. Local authorities must simply agree which could lead to delays in establishing the process and conflicts when the plan is developed. Clarification is needed in terms of roles and responsibilities. We propose to amend the clause to ensure clear roles and responsibilities and also create a conflict resolution pathway. No specific wording is proposed.	Amend to ensure clear roles and responsibilities and create a conflict resolution pathway.
240 - Scope of abatement notice	Case law supports "satisfied" sets a higher threshold under the RMA. DairyNZ believes that abatement notices are often issued in circumstances that do not reflect the actual level of breach or risk on farm. This issue is significant given recent increases in penalties for environmental breaches.	**240 Scope of abatement notice** (4) An abatement notice must not be served unless the enforcement officer is satisfied ~~has reasonable grounds for believing~~ that any of the circumstances in subsection (1) or subsection (2) exist.

241 - Compliance with abatement notice	Insert a provision requiring periodic review of abatement notices. DairyNZ is concerned that current practice in issuing abatement notices for farming activities (carried over into the two Bills) does not provide for reassessment of whether a notice remains necessary or proportionate. As drafted, there is no obligation on a compliance officer to review or withdraw a notice, leaving farmers to initiate removal and often unaware of the notice's status or implications. A notice that remains in force without the farmer's full understanding does not support behavioural change. A review clause would ensure the notice remains relevant to the offence or risk, improve transparency for farmers, and allow councils to clearly communicate any ongoing concerns.	**241 Compliance with abatement notice** (1) A person on whom an abatement notice is served must— (a)comply with the notice within the period specified in the notice; and (b)unless the notice directs otherwise, pay all the costs and expenses of complying with the notice. .. (4) An abatement notice ceases to have effect [3] years after the notice issued under section 240 or confirmed under section 245, unless the relevant authority has served notice that it is satisfied section 240(4) continues to apply. *(Consequential changes to 245 are also sought)*
245 - Cancellation of abatement notice	Consequential changes to those sought under clause 241	...(8) Notwithstanding subsections (1)-(7) above, an abatement notice ceases to have effect [3] years after the notice being issued unless the relevant authority is satisfied section 240(4) continues to apply.
254 - Offences against this Act	Councils will often issue abatement notices before prosecuting for a breach of the RMA. Councils will add the breach of the abatement notice to the charges without a clear rationale as to why that should be prosecuted as an offence distinct from the original offence. That practice has the effect of increasing penalties without a clear rationale.	**254 Offences against this Act** (1) A person commits an offence against this Act if the person contravenes, or permits a contravention of, any of the following: (a) sections 17 and 18 (which impose duties and restrictions in relation to land and subdivision): (b) any enforcement order:

		(c) any condition of a planning consent: ~~(d) any abatement notice, other than a notice under section 240(1)(c):~~ (e) any monetary benefit order made under clause 29 of Schedule 8:
257 - Liability of principal for acts of agents	The use of "all reasonable steps" creates a very high bar and results in a difficult test to satisfy. DairyNZ recommends amendments to "reasonable steps" which recognises that the judgement made to determine liability occurs in hindsight. In practice we would expect there to be a disconnect between what a farmer has undertaken as taking all reasonable steps and what a council officer would in hindsight determine as all reasonable steps. The changing in wording reflects this issue.	**257 Liability of principal for acts of agents** In subsections (2)(b), (4) and (5), change "all reasonable steps" to "reasonable steps".
261 - Insurance against fines unlawful	DairyNZ opposes the restrictions on insuring against fines. We agree it is not appropriate for insurance to cover fines arising from intentional breaches or actions taken for commercial gain. Penalties must deter deliberate or negligent non-compliance. However, dairy farming operates within complex and variable environmental conditions, many of which fall outside a farmer's reasonable control. Strict liability offences mean that farmers can incur penalties even when well-maintained systems fail unexpectedly due to equipment malfunction, staff error, or severe weather. Prohibiting insurance cover for fines creates a risk of disproportionately punitive financial consequences for unintentional events. Insurance plays an important role in	Delete clause 261

	managing these uncontrollable risks and supports continued investment in environmental infrastructure. Dairy farming is capital-intensive, and the ability to insure against inadvertent breaches provides financial certainty that enables further investment in mitigations such as effluent storage and discharge systems. Insurers already incorporate compliance history into premium assessments. Removing the ability to insure against fines is therefore unnecessary and risks undermining farmers' capacity to invest in improved environmental performance.	
283 – Regulations relating to planning consent levies	DairyNZ opposes the introduction of a clause providing for regulations to be made to prescribe a levy on planning consents and permitted activities registered under clause 180. It is not possible to fully assess the impact of clause 283 without clarifying the function of clause 38 and the requirement for registration. Regardless, our view is that the introduction in legislation of a planning consent levy should be deferred and consulted on separately to fully assess the implications for dairy farmers.	Delete clause 283.
Schedule 2 Spatial plans		
2 - Contents of regional spatial plans	Subclause 2 requires a spatial plan to be consistent with environmental limits. It is unclear what this will mean in practice, especially since ecosystem health limits will be	**2 Contents of regional spatial plans** (2) A regional spatial plan must be consistent with— ~~(a) environmental limits; and~~

	developed and included in the natural environment plan, a plan to be developed after the spatial plan. It needs to be either clarified how this sequencing will work in practice or the requirement removed.	(b) national instruments; and (c) any water conservation order that applies in the region.
5 - General considerations	Insert an additional sub-clause similar to (xii) to require the spatial plan committee to have regard to the outcome from word done by local authorities with other groups as outlined in clause 69(g).	Insert a new sub-clause: (2) The spatial plan committee must, to the extent relevant to the draft regional spatial plan,— (a)have regard to— (xii) a. <u>any outcome from the work done by local authorities with other groups identified in section 69(g); and</u>
6 - Incorporation of information from land use and natural environment plans	Clause 68(1)(a and b) directs that: *a natural env plan and a land use plan implements the spatial plan*. However, clause 6 in schedule 2 allows for information from those plans to be incorporated in the spatial plan. It is confusing how this will work in practice since the Spatial Plan is supposed to be developed ahead of the natural environment plan and land use plan. We also see no need for duplication of information between the plans. Information not necessary for the plan can sit outside with a reference to information but there is no need to incorporate information from "lower order plans" in the spatial plan itself. There is a similar issue with clause 5(ix) and (x) which states that the spatial plan must have regard to the natural	Amend to reflect the order in which the plans are supposed to be developed.

	environment plan and land use plans. It unclear how this is intended to work in practice.	
13 - Audit of draft regional spatial plan	We oppose clause 13 and seek deletion since it is not an appropriate function for the Minister and should be left to the Courts to do in response to an appeal of a plan.	Delete clause 13.
32 - Review required every 10 years and if national instruments require	Insert in clause 32, to limit the cost to local authorities that may arise from a requirement to review a spatial plan due to requirements in a national instrument, that requirement should not be more often than every 5 years.	**32 Review required every 10 years and if national instruments require** Review required every 10 years and if national instruments require (1)A spatial plan committee must review its regional spatial plan— (a) within each 10 year period starting from the date on which it is adopted to assess whether the plan needs to be amended to maintain compliance with section 67(c); and (b) when required to do so by national instruments but not more often than every 5 years.

End of submission tables.

Appendix 1 – Evidence - Previous issues with nutrient, sediment and E. coli targets as well as implications for limit setting and the role of guardrails

Previous issues with nutrient targets

1. The implications of nutrient, periphyton and *E. coli* targets can be examined using the online Scenario Builder modelling tool[5]. This tool enables estimation of the scale of on-farm mitigation and/or land-use change required to meet specified objectives.
2. Use of the Scenario Builder, together with the associated nutrient look-up tables, indicates that large reductions in nitrate-nitrogen are often required to achieve B or C band periphyton targets, particularly in unshaded streams. In various cases studies, the reductions required appear achievable only through significant conversion of pastoral land to forestry.
3. For example, in the Oreti catchment above Wallacetown, a major dairy catchment in Southland, when using settings proposed in several regulatory processes, modelling indicates that a 98% reduction in nitrate-nitrogen would be required to achieve a B band periphyton target, and an 37% reduction to achieve a C band (with D band not permitted). Under these assumptions, achieving a B band would require conversion of all pastoral land to forestry.[6] Achieving a C band would require conversion of approximately 7% of dairy land (around 3,400 hectares).
   The scientific basis for setting nutrient limits to achieve periphyton targets remains contentious. This is illustrated by:
   - measured periphyton data at the Oreti at Braxholme monitoring site, which shows that despite an existing nitrate-nitrogen concentration of approximately 1.1 mg/L, periphyton biomass is already within the B band, whereas the nutrient look-up tables[7] indicate a concentration of approximately 0.02 mg/L would be required; and
   - substantial changes in nutrient concentration targets across 5 different versions of the look-up tables released between 2020 and 2023.
4. These factors raise questions about the balance of costs, benefits and risks under the current freshwater management framework, particularly where significant economic impacts are indicated in the absence of clear evidence of an existing environmental problem.

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[5] https://www.freshwater-scenario-builder.co.nz

[6] These estimates assume a 30% reduction through on farm mitigation on dairy farms and 10% reduction from mitigation on dairy farms and a probability of exceedance (PoE) 25%. The PoE is a statistical measure of risk of the periphyton target state being achieved everywhere in the catchment.

[7] The methodology recognised by MfE for setting nutrient targets to achieve periphyton outcomes.

Previous issues with sediment targets

5. A 2024 report commissioned by Beef + Lamb New Zealand[8] provides an illustration of these issues in relation to sediment management. The report indicates that suspended fine sediment (SFS) thresholds:
    - are not derived from measured stressor–response relationships;
    - are applied using four sediment classes, despite the underlying science recommending twelve; and
    - in relation to the national bottom lines (NBLs):
        i. may not be achievable without substantial retirement of hill and high-country sheep and beef farming. Modelling cited by Greer suggests that even with extensive spaced planting (61% of sheep and beef farms), SFS NBLs would not be met; and
        ii. based on some datasets, are not met in approximately 20% of monitored minimally disturbed rivers, implying that achieving the NBLs may require improvements beyond natural state across a significant proportion of the river network.

Previous issues with E. coli targets

6. The Scenario Builder also allows assessment of the implications of different *E. coli* targets. Results vary between catchments, but in some pastoral systems the modelling suggests that even where on-farm measures achieve a 50% reduction in *E. coli* losses (from, for example, stock exclusion, buffers and critical source area management), land-use change may still be required to meet a median concentration target of 130 *E. coli*/100 mL, as currently specified under the NPS-FM to meet a swimmable standard.
7. For example, in the Manawatu River at Opiki Bridge, a predominantly dairy catchment in Manawatu, the modelling indicates that achieving the median target would require a reduction in dairy land area of approximately 21,200 hectares (24% of dairy), even with assumed on-farm *E.coli* mitigation of 50%. In the Punehu catchment in Taranaki, the modelling indicates that a reduction in dairy land of approximately 2,090ha (76% of dairy) would be required to meet the 130 *E.coli* / 100ml target (assuming 50% reduction could be achieved on farm by the remaining 650ha of dairy).
8. The Beef + Lamb New Zealand report also notes that the 95th percentile *E. coli* statistic, which forms part of the current national objectives framework, does not allow for exclusion of data collected during rainfall events. During such events, *E. coli* concentrations are typically elevated, mitigation effectiveness is limited, and recreational exposure likely low.

[8] Greer, M.J.C. 2024. Technical assessment of the impacts of the NPS-FM 2020 national bottom lines on sheep and beef farms. Prepared for Beef + Lamb New Zealand Ltd. Torlesse Environmental Report No. 2024-001. Christchurch, New Zealand.

Implications for limit setting and the role of guardrails

9. The examples above illustrate that the social and economic consequences of limit-setting decisions can be significant. Our concerns regarding limit setting are not about providing additional capacity for growth, but about avoiding limits that can only be met through levels of mitigation and land-use change that, in many instances, will be economically or socially unsustainable.
10. In this context, DairyNZ considers that the NEB provides limited assurance that inappropriate or impracticable limits will be avoided. Many of the amendments proposed by DairyNZ in this submission are intended to support the setting of limits and caps that appropriately reflect ecological objectives and community aspirations, while also giving due consideration to:
    - the dominant land uses within a catchment; and
    - the practicality, availability and feasibility of the practices and technologies required to achieve those limits and caps.
11. It is important to note that, to our knowledge, there is currently no policy instrument capable of delivering large-scale land-use change—such as conversion from dairy to forestry—given existing and foreseeable commercial drivers. For this reason, setting limits that can only be met through such changes is unlikely to be effective. Behavioural science suggests that imposing targets known to be unachievable is unlikely to encourage positive engagement by farmers and may undermine broader efforts to improve freshwater management.

Appendix 2 – Evidence - Key limitations associated with the main water quality contaminants (nitrogen, sediment, phosphorus, E. coli) and the tools available to quantify them

Nitrogen

1. Nitrogen is the contaminant for which New Zealand farming has the most developed modelling and management tools. A number of systems operate at the property scale, including OverseerFM, the Nitrogen Risk Scorecard, and the Ministry for the Environment's Risk Index Tool.
2. These tools are useful for tracking inputs, management practices, and relative risk, but they do not provide sufficiently accurate or defensible estimates of absolute nitrogen loss to water at the farm or paddock scale. As a result, they are not reliable enough to support regulatory allocation or market-based mechanisms that require precise, property level quantification.

OverseerFM

3. OverseerFM (Overseer) is widely regarded as the most used nutrient-modelling tool in New Zealand, having been adopted for more than a decade by farmers, industry bodies, and regional councils for nutrient budgeting, farm environment planning, and regulatory processes.
4. The Ministry for the Environment's 2024 guidance following a review of Overseer redevelopment review is explicit that:
    - When using Overseer output numbers should not be used as absolute numbers and should be used only to assess trends and relative changes, not absolute losses.
    - Overseer is unlikely to be a reliable tool for predicting either relative or absolute nutrient loss estimates from farms.[9]
5. These findings reinforce what the Environment Court has repeatedly determined.
    - In the Waikato Healthy Rivers Plan Change 1 proceedings, the Court accepted a 30 to 50% margin of error in Overseer's farm scale nitrogen loss estimates. It was noted that this level of variability cannot be considered acceptable for use as a tool to both 'sort activities into bins' or use as an indicator of when the level of discharge requires an activity to do more.

[9] Ministry for the Environment (2024). Responding to the Overseer model redevelopment review: A guide for councils.https://environment.govt.nz/assets/publications/Freshwater/Overseer-model-redevelopment-review-guide-2024.pdf

- In the Rotorua Lakes Plan Change 10 process, the Court usefully highlighted that if the lower range of ± 30 to 50% was used for a 4,000 kg a year property the actual loss could fall anywhere from 2,800 and 5,200 kg a year, which is substantial and makes sound resource management planning problematic.[10]

6. Overseer results are highly sensitive to assumptions about soil, climate, irrigation, and effluent systems. It is difficult to determine a single margin of error as each model has uncertainty and therefore the results and related margin of error depend on what parts of the model are utilised (depending on the farm system). However, for example, research shows average N-loss uncertainty of about 27%, rising to around 35% at low losses (<10 kg N/ha/yr) and dropping to roughly 25% above 40 kg N/ha/yr. Uncertainty falls below 20% only once N-loss exceeds 70 kg N/ha/yr. [11]

MfE Risk Index Tool

7. The Ministry for the Environment's Risk Index Tool (RIT) is a valuable addition to decision making but one that also has limitations. The RIT provides a transparent, evidence-based assessment of relative nitrogen-loss risk at the farm and block scale, using farm system, management, and biophysical factors to inform freshwater farm plans. It improves national consistency but is limited to producing risk scores, not measured or modelled nitrogen loss quantities.[12]
8. The RIT does not estimate kilogrammes of nitrogen lost and is not designed for allocation or accounting purposes. The Ministry has stated that councils must interpret RIT outputs alongside other information and that the tool remains under development. As a result, the RIT cannot be used to allocate contaminant loads, set property level limits, or underpin market-based allocation systems.[13]

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[10] Environment Court – Lake Rotorua Nutrient Management, Plan Change 10 (Interim Decision). Environment Court Interim Decision - Decision No. [2019] NZEnvC 136 - 9 August 2019

[11] Jean-Paul Tavernet - Sensitivity and uncertainty analyses for N loss estimates by the Overseer model Tavernet_2.pdf

[12] Ministry for the Environment – Risk Index Tool Overview. https://environment.govt.nz/what-government-is-doing/areas-of-work/freshwater/risk-index-tool/

[13] Ministry for the Environment – Risk Index Tool Technical Document (v2). https://environment.govt.nz/assets/publications/Freshwater/risk-index-tool-technical-document-v2.pdf

Catchment versus property scale measurement

9. Peer reviewed research shows that diffuse contaminant losses are driven by complex, variable processes that manifest at the catchment scale, where cumulative effects occur and where modelling tools are designed to operate. Disaggregating catchment level limits to individual properties is not scientifically supported.[14] [15]
10. Environmental thresholds for contaminants are determined at catchment or regional scale, where cumulative effects manifest and where modelling is more reliable. Attempting to disaggregate these limits into farm scale allocations is scientifically unsupported.
11. Taken together, the evidence demonstrates that no current tool can reliably quantify nitrogen losses at the property scale, let alone support allocation or trading systems.

E. coli

12. E. coli is one of the most challenging contaminants in pastoral catchments because its sources and movement are difficult to determine or model at the property scale. Research led by DairyNZ and AgResearch shows that E. coli transport is shaped by dung loads, soil characteristics, hydrology, stock behaviour, and land-management practices. The programme aims to map E. coli pathways, quantify how much reaches waterways, and assess potential reductions to inform on-farm good practice.[16]
13. The emerging conclusions from this research are clear: no validated model exists to estimate E. coli losses at the farm scale; E. coli transport is highly event-driven (e.g., storms, grazing timing); and catchment-scale modelling remains the only scientifically defensible approach. A technical assessment of the NPS-FM 2020 bottom lines by Beef + Lamb New Zealand reaches the same position, noting that microbial contaminants cannot be reliably modelled at fine spatial scales.[17]

Sediment and Phosphorus loss

14. Research in relation to sediment and phosphorous loss comes to similar conclusions.

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[14] Macintosh et al. – Diffuse Nutrient Losses and Spatial Variability in Agricultural Landscapes. Nutrient Cycling in Agroecosystems, Springer, Article No. 10146, 2021.
[15] NIWA – Catchment-Scale Water-Quality Modelling Frameworks. National Institute of Water and Atmospheric Research, DIPCON Water-Quality Models Technical Report
[16] DairyNZ – Understanding E. coli in Pastoral Catchments. https://www.dairynz.co.nz/research/science-projects/understanding-e-coli/
[17] Torlesse Environmental – Technical Assessment of the Impacts of the NPS-FM 2020 National Bottom Lines on Sheep and Beef Farms. https://beeflambnz.com/knowledge-hub/PDF/technical-assessment-impacts-nps-fm-2020-national-bottom-lines.pdf

15. NIWA[18] [19] and Beef + Lamb[20] [21] both show that sediment and particulate phosphorus losses occur in short, intense bursts during a small number of storm events. These losses are driven by rainfall intensity, runoff, catchment hydrology, and hydrologically connected critical source areas, rather than farm boundaries, so the pattern of loss is uneven across the landscape. Because these processes operate at a catchment scale and are highly episodic, they cannot be modelled or measured reliably at the farm or paddock level.
16. Regional councils and sector groups have invested heavily in understanding on-farm sediment loss, yet research consistently shows that direct measurement at fine scales is impractical. An MFE funded project by WSP and BOPRC[22] found that mapping biophysical risk factors such as slope, elevation, soil type, rainfall, and flow paths provides a far more workable approach. By focusing on risk rather than attempting to measure actual losses, mitigation can be prioritised where it will have the greatest impact, making 'risk to water' a more realistic and effective basis for management.

[18] NIWA – Suspended sediment dynamics in New Zealand Rivers. Suspended sediment dynamics in New Zealand Rivers | Earth Sciences New Zealand | NIWA
[19] NIWA – Stormwater Contaminant Loads and Pathways. Stormwater management | Earth Sciences New Zealand | NIWA
[20] Beef + Lamb - Sediment loss to water from sheep and beef farms. sediment-loss-water-sheep-and-beef-farms.pdf
[21] Torlesse Environmental – Technical Assessment of the Impacts of the NPS-FM 2020 National Bottom Lines on Sheep and Beef Farms. https://beeflambnz.com/knowledge-hub/PDF/technical-assessment-impacts-nps-fm-2020-national-bottom-lines.pdf
[22] Ministry for the Environment - Biophysical risk mapping. Biophysical risk mapping | Ministry for the Environment

Appendix 3 – Evidence – Economic analysis of market mechanisms and levies

Market-based regulation of non-point sources of freshwater pollution

1. Market-based approaches to pollution regulation encompass various instruments including trading schemes, levies, and taxes. This section focuses specifically on trading schemes (cap-and-trade or credit trading) where pollution rights or credits are allocated to participants who determine prices through buying and selling. Throughout this section, market-based instruments and trading schemes are used interchangeably to refer specifically to these trading mechanisms, not levies or taxes.
2. **Dairy NZ evaluation** Market-based instruments for regulating nonpoint source freshwater pollution (e.g. nitrogen) should be viewed as complementary, not default, policy tools. Their application may be justified in specific settings: overallocated catchments with many participants, locations where marginal environmental benefits are exceptionally high, and where monitoring technologies provide credible and low-cost measurement. Even then, practical implementation challenges and the risk of unintended outcomes suggest caution is needed. For most non-point source situations, a broader regulatory approach should also be accompanied by industry-led initiatives such as a voluntary scheme based on best management practices. These would align with existing policy frameworks and safeguard the competitiveness of the dairy sector. A systematic evaluation of these industry-led initiatives is beyond the scope of this economic analysis, however a recent paper based on 80% of dairy farms in the country showed that two-thirds of dairy land use now uses Good Management Practice driven by industry initiatives. This has led to approximately a 20% reduction in nitrogen loss and 14 % reduction in phosphorus loss to water (Macintosh et al., 2026). [23]

[23] Macintosh, K., Thiange, C., Wright-Stow, A., Heffey, K., Cook, L., Millar, A., & McDowell, R. 2026. Assessment of good farming practice implementation by dairy farms in New Zealand: nutrient loss reductions and timeframes for detecting improvement. *Critical Insights in Agriculture*, 1:1, 2572172, DOI: 10.1080/29932106.2025.2572172

3. Empirical evidence reinforces this cautious stance. Water-quality trading schemes in the United States have delivered little real trading and modest environmental gains, with their cost effectiveness largely remaining theoretical and unrealised in practice (Horan et al. 2025)[24]. In contrast, voluntary industry-led initiatives in New Zealand demonstrate measurable success in practice adoption and ecological outcomes. These initiatives coexist with existing and anticipated regulatory frameworks, making it difficult to isolate the drivers of behavioural change. As an example, analysis of a 20-year dataset (2003–2023) across five catchments found 67% of in-stream water quality trends improving, with significant decreases in phosphorus and suspended sediment attributed to Good Management Practices (GMPs) such as riparian planting and improved effluent systems (McDowell et al., 2021[25]). By 2025, over 97% of dairy-adjacent waterways remained fenced, and 70% of dairy farms had implemented tailored Freshwater Farm Plans managing site-specific risks (DairyNZ 2025[26]; Ministry for the Environment 2025[27]). Surveys in the Waikato (in 2022) confirm native woody vegetation in riparian margins increased 6% over two decades through voluntary restoration efforts (Norris et al. 2024[28]). These results suggest that voluntary and industry-led frameworks, operating within broader policy and regulatory contexts, can contribute to the structural and behavioural changes necessary for ecological recovery.
4. If market-based instruments for NPS pollution were to be considered, careful attention to design is essential: credible monitoring, sufficient market thickness[1], transparent verification, and adaptive management. Any market-based approach should complement rather than displace proven industry-led initiatives to improve water quality and ecosystem health. Hybrid mechanisms may harness the strengths of both approaches while mitigating their respective limitations, supporting continued ecological improvement while exploring innovative regulatory tools. Further analysis is required to identify the most efficient combination of these approaches.

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[24] Horan, Richard D, James S Shortle, and Carson Reeling. 2025. "Economics and Policy of Point-Nonpoint Source Water Pollution Trading Programs." *Water Economics and Policy*.

[25] McDowell, Richard W, Ross M Monaghan, Chris Smith, et al. 2021. Quantifying Contaminant Losses to Water from Pastoral Land Uses in New Zealand III. What Could Be Achieved by 2035? *New Zealand Journal of Agricultural Research* 64 (3): 390–410.

[26] DairyNZ. 2025. *Annual Report 2024/25: Highlights of Environmental Mitigations and Farm Performance*. DairyNZ. https://www.dairynz.co.nz/media/ha4fg0cg/annual-report-2024-2025-v2.pdf.

[27] Ministry for the Environment. 2025. *Freshwater Farm Plans: Implementation Guidance and Regulatory Updates*. https://environment.govt.nz/acts-and-regulations/freshwater-implementation-guidance/freshwater-farm-plans/.

[28] Norris, T., H. Jones, and M. Kimberley. 2024. *Riparian Characteristics of Pastoral Waterways in the Waikato Region, 2002-2022*. TR 2024/04. Waikato Regional Council. https://www.waikatoregion.govt.nz/assets/WRC/TR202404.pdf.

5. Market-based instruments used to manage point-source pollution or water quantity allocation can conceptually operate more effectively and better meet the above design requirements, because water volumes are physically measurable, monitored in real time, and can be accurately accounted for. This measurability makes it easier to define rights, track use, and enforce trades, conditions that are more challenging to achieve for diffuse pollution. However, this has not been the focus of this analysis.

Underlying analysis

6. DairyNZ's position is informed by analysis of the conditions market-based instruments must meet to achieve efficient performance and improved freshwater quality. While not comprehensive, this section demonstrates that key design prerequisites are challenging to satisfy for NPS pollution regulation: information, transaction costs and market barriers, and property rights.
    - **Efficiency** - For the context of this evidence, efficiency means achieving environmental objectives at minimum social cost.
    - **Allocative efficiency** - occurs when marginal abatement costs equal marginal environmental benefits across all pollution sources, maximizing net social welfare. That is, resources are directed to the highest-value use.
    - **Cost-effectiveness** - achieves a given environmental target at lowest total cost by allocating abatement to lowest-cost sources.
    - **Dynamic efficiency** - accounts for costs and benefits over time, including innovation incentives and long-term investment. In theory, market-based instruments aim to achieve these efficiency outcomes by allowing flexible compliance and price-driven resource allocation (Baumol and Oates 1988[29]; Tietenberg 2006[30]; Kolstad 2011[31]). However, theoretical efficiency potential does not guarantee practical performance. Whether markets outperform regulatory or voluntary approaches depends on context-specific conditions, particularly the ability to observe, measure, and verify the units being traded.

Perfect Information

7. **NPS pollution.** NPS pollution (such as nutrient runoff) originates from diffuse agricultural activities. Rainfall mobilizes nutrients across land into water bodies via complex and diffuse pathways (Shortle et al. 1998; Horan et al. 2025). NPS pollution emerges from widespread and spatially

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[29] Baumol, William J., and Wallace E. Oates. 1988. *The Theory of Environmental Policy*. 2nd ed. Cambridge University Press. https://doi.org/10.1017/CBO9781139173513.

[30] Tietenberg, Thomas H. 2006. *Emissions Trading: Principles and Practice*. 2nd ed. Resources for the Future. https://doi.org/10.4324/9781315064277

[31] Kolstad, Charles D. 2011. *Environmental Economics*. 2nd ed. Oxford University Press.

dispersed sources across agricultural landscapes. Two fundamental characteristics of NPS pollution (unobservability and randomness) create challenges for market-based regulatory instruments that depend on measurable, verifiable and predictable loading units for allocative-efficient trading.

Unobservability and Weak Environmental Causality

8. Diffuse transport pathways prevent accurate, cost-effective measurement of individual farm loadings. Numerous heterogeneous sources create uncertainty about contributions and complex spatial-temporal interactions. Establishing tradeable loading units requires modelling rather than direct observation, and treating modelled outputs as equivalent may misrepresent actual environmental impacts. Neither regulators nor participants can reliably verify compliance or validate trades, foundational requirements for functioning markets. Moreover, scientific evidence demonstrates no reliable and quantifiable connection between pollution loads from dairy farming and ecological outcomes in waterways. Ecological health is predominantly influenced by non-contaminant factors including hydrological regimes, habitat structure, flow dynamics, and biological interactions (White et al. 2025;[32] Pingram et al. 2019[33]) This causal uncertainty means farmers' management choices cannot be reliably linked to environmental impacts (Horan et al. 2025[34]). Trading schemes under these conditions create property rights for metrics lacking demonstrated linkage to ecosystem health. Without verifiable cause-effect relationships, markets cannot establish the legal or economic certainty required for secure property rights, rendering such systems administratively indefensible and ecologically ineffective (Shortle 2013[35]).

Randomness

9. Weather variability makes NPS pollution inherently unpredictable, regardless of farm practices. Rainfall timing, drainage events, intensity, and soil conditions largely determine nutrient losses, which are factors beyond farmers' control. Market-based instruments depend on fixed and measurable pollution targets, but any single numeric target would be frequently breached due to weather. This uncertainty prevents reliable

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[32] White, R. S. A., T. Stephens, T. Kpodonu, and R. J. Stoffels. 2025. "Testing and Improving the Usefulness of Invertebrate Indicators of Multiple Freshwater Stressors." *Freshwater Ecology*, ahead of print, November. https://doi.org/10.1111/fec.XXXXX.

[33] Pingram, Michael A, Kevin J Collier, Mark P Hamer, Bruno O David, Alicia K Catlin, and Joshua P Smith. 2019. "Improving Region-Wide Ecological Condition of Wadeable Streams: Risk Analyses Highlight Key Stressors for Policy and Management." *Environmental Science & Policy* 92: 170–81.

[34] Horan, Richard D, James S Shortle, and Carson Reeling. 2025. "Economics and Policy of Point-Nonpoint Source Water Pollution Trading Programs." *Water Economics and Policy*.

[35] Shortle, James. 2013. "Economics and Environmental Markets: Lessons from Water-Quality Trading." *Agricultural and Resource Economics Review* 42 (1): 57–74.

pricing of pollution credits: buyers cannot know what they are purchasing, and sellers cannot guarantee delivery. Without predictable emissions, markets cannot produce stable price signals or allocate resources efficiently.

10. In summary, unobservability means pollution cannot be measured or monitored at reasonable cost; randomness means it cannot be predicted with sufficient precision; and the weak causal linkage between nitrogen surplus and ecosystem health means the traded metric may not represent meaningful environmental value. This implies that neither buyers nor sellers can verify what is being traded or whether trades generate environmental benefits. Consequently, market-based instruments for NPS pollution may suffer design flaws and weak institutional foundations, resulting in thin markets with minimal trading activity and negligible environmental improvements (Horan et al. 2025[36]; Shortle et al. 1998).[37]

Monitoring and Enforcement (M&E)

11. Market-based instruments function efficiently when M&E costs are proportionate to efficiency gains. However, NPS pollution is unobservable, and the diffuse nature raises questions about whether M&E costs remain within acceptable bounds relative to potential benefits. Evidence from American programs demonstrates that market-based tools may work only when M&E costs approach zero and NPS contributions operate at small scales, conditions rarely met in practice (Horan et al. 2025[35]). Diverse agricultural operations across heterogeneous landscapes require individualized compliance verification, in addition to the administrative burden of verifying each farm's compliance may exceed the potential efficiency gains from allowing trades.

Information costs

12. Information costs in water quality trading stem from modelling complex biophysical processes linking farm practices to environmental outcomes. Each trade requires predictive models estimating baseline loads, abatement reductions, pollutant transport through heterogeneous landscapes, and resulting water quality impacts, all introducing uncertainty through spatial variation in soils, topography, hydrology, and weather. Complications intensify when farms span multiple catchments, distributing pollutant losses across different watersheds. In catchment-based markets, this raises critical questions about farms allocating purchases between catchments and determining optimal trading and quantities in each catchment. These multi-catchment dynamics significantly increase information requirements and decision complexity for effective trading.

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[36] Horan, Richard D, James S Shortle, and Carson Reeling. 2025. “Economics and Policy of Point-Nonpoint Source Water Pollution Trading Programs.” *Water Economics and Policy*.

[37] Shortle, James S, David G Abler, and Richard D Horan. 1998. “Research Issues in Nonpoint Pollution Control.” *Environmental and Resource Economics* 11 (3): 571–85.

13. Moreover, when environmental causality is weak, as with NPS pollution and ecosystem health, these costs may escalate as parties may dispute model assumptions and outputs.

Search Costs

14. Search costs encompass the expenses of identifying potential trading partners, negotiating agreements, and establishing mutual trust in potentially thin markets. If finding and verifying a credible seller (e.g., a dairy farmer offering nutrient reductions) is too expensive or difficult for a buyer, trades are unlikely to occur. NPS markets may face high search costs because: (1) numerous small and dispersed sources would have to be individually assessed rather than dealing with few large point sources, (2) heterogeneity may mean that each farm represents a unique "product" requiring customized evaluation, (3) information asymmetries could allow sellers to misrepresent their baseline emissions or abatement effectiveness, and (4) regulatory uncertainty about credit permanence and liability discourages participation. These search costs are non-negligible and must be quantified through resource-intensive processes for each potential trade (Horan et al. 2025[35]). All this may result on market thinness: few transactions occur despite potential efficiency gains, as the costs of finding and consummating trades exceed the benefits.

Market Size

15. Markets require sufficient participants to ensure competitive pricing, preventing market power and ensuring prices reflect true marginal abatement costs rather than bargaining positions (Roth 2008[38]). These markets also provide liquidity: participants can enter or exit transactions without substantially affecting prices. However, NPS pollution markets may face constraints on participant numbers. Most catchments contain limited potential sellers (farms with abatement opportunities) and even fewer buyers (typically point sources seeking offset credits or regulatory agencies). This means that efficiency gains from trading (which depend on competitive markets allocating pollution rights to lowest-cost abaters) cannot be realized in practice. Geographic constraints compound this problem: pollution impacts are spatially explicit, preventing trades between distant catchments and further fragmenting already-thin markets (Horan et al. 2025[35]).

Price Discovery in Thin Markets

16. Markets with few participants cannot establish reliable prices. When catchments have only a handful of potential sellers, those sellers possess substantial market power and charge inflated prices to buyers needing credits for compliance, not because pollution reduction is expensive, but

[38] Roth, Alvin E. 2008. “What Have We Learned from Market Design?” *The Economic Journal* 118 (527): 285–310.

because supply is scarce. Prices swing dramatically with minor changes in participation or regulations, creating uncertainty. Farmers may hesitate to invest in pollution reduction when they cannot predict credit values. This cycle (uncertainty suppresses trading, limited trading prevents reliable pricing, poor pricing discourages participation) means market prices do not reflect actual environmental costs or benefits.

Structural Market Limitations

17. Cumulative transaction costs (monitoring and enforcement, information, and search costs) likely exceed potential efficiency gains, eliminating the rationale for NPS pollution markets (Horan et al. 2025[35]). These costs increase with participant numbers rather than trade volume, undermining market efficiency. United States programs confirm that NPS pollution trading is expensive for both buyers and sellers and generate minimal activity (Horan et al. 2025[35]; Selman et al. 2009[39]). Buyers facing uncertain and volatile prices cannot determine fair value, while sellers unsure of demand resist investing in abatement. Information asymmetries compound these problems: sellers possess private knowledge about abatement costs, and thin markets provide insufficient transactions for price discovery. Fairness concerns and exploitation risks may also deter participation, particularly among smaller farmers lacking sophistication for complex negotiations. Consequently, prices cannot reflect genuine social values or induce appropriate behavioural responses. While optimal approaches depend on context, evidence indicates non-market instruments (performance standards, good management practices, input-based standards, or hybrid mechanisms) may deliver superior cost-effectiveness for diffuse agricultural pollution.

Property Rights Fundamentals

18. Market-based instruments require well-defined property rights with three essential characteristics: exclusivity, enforceability, and transferability. Rights to emit pollution or credits for reducing emissions must be clearly delineated, legally enforceable through credible sanctions, and freely transferable among participants. The New Zealand planning system explicitly aims to enhance these property rights to support market mechanisms. However, property rights also require that all costs and benefits be internalized within market prices. If significant environmental damages remain unpriced (as occurs when emission-outcome relationships are weak or uncertain) markets cannot achieve efficiency regardless of how well-defined the formal property rights appear. For NPS pollution, the fundamental challenges of unobservability, stochasticity, and weak causal linkages to ecosystem health prevent the establishment of meaningful property rights that satisfy these criteria.

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Selman, Mindy, Suzie Greenhalgh, Evan Branosky, Cy Jones, and J. Guiling. 2009. *Water Quality Trading Programs: An International Overview*. WRI Issue Brief No. 1. World Resources Institute. https://www.wri.org/research/water-quality-trading-programs-international-overview

Charges on the use of natural resources in overallocated catchments

19. **DairyNZ evaluation:**
    - Unlike market-based instruments for NPS pollution (e.g. nitrogen, nutrients or freshwater contaminants), which face fundamental measurement challenges explained in the above section, quantity-linked levies have the potential to enhance efficiency and support reallocation when resource use is directly measured and institutions enable credible verification. For example, conditions more easily satisfied for resources such as water takes (measured via meters), gravel extraction volumes, forestry harvest volumes. Charges work efficiently when the charged unit is verifiable and causally linked to environmental impacts, conditions more readily satisfied for resource extraction than diffuse pollution.
    - However, implementation requires research and careful design. Charges or levies must be set at a level that induces meaningful behavioural change without significantly affecting the competitiveness of dairy farming. This requires research linking levy rates to environmental impact values through non-market valuation and abatement cost analysis. Adaptive management is essential: initial rates should be informed by available evidence, followed by monitoring of behavioural responses and periodic adjustment to achieve environmental objectives. In some contexts (e.g., irrigation systems with stochastic water availability), quotas or caps may prove more reliable primary instruments, with levies playing a complementary role in managing demand at the margin.

Quantity-linked levies to improve allocative efficiency

20. When a levy is charged per physical unit of resource use (for example, per cubic metre of water or per tonne of sand), it can align private marginal costs with marginal environmental damages and improve allocative efficiency. In such cases, prices can steer resource use toward higher value uses. To work well, the levy must target directly measured quantities rather than weak proxies, and the rate should approximate marginal damages while accounting for uncertainty and periodic review. These levies are most effective where use is metered, billing systems exist, and monitoring and enforcement are reliable. Under those conditions, volumetric and location specific charges, varying by source, season, or return flows, can send clear economic signals, support cost recovery, and still operate within planning rules that protect environmental flows.

Complementarity and behavioural change

21. Levies may be complemented by other agri-environmental mechanisms where quantities are difficult to observe or where behavioural change requires additional incentives.

Non-market valuation and cost-recovery frameworks

22. Calibrating the size of a quantity-based levy can draw on non-market valuation (e.g., stated-preference or revealed-preference studies) to estimate willingness to pay for damage reductions (benefits), combined with cost data for abatement options. While exact marginal damages are rarely observed, second-best approaches exist by using benefit estimates and cost-recovery principles to set charges that both internalise part of the external cost and fund management functions. These approaches are compatible with cost-recovery and polluter-pays principles for water services (including environmental and resource costs), providing a policy scaffold for charges that better reflect social costs, while acknowledging practical limits and the need to blend pricing with non-pricing instruments (Fane and Muller 2019[40]; McDowell et al. 2021[41]).

First-In, First-Served framework

Dairy NZ evaluation

23. First-come, first-served (FIFS) allocation provides a pragmatic foundation for resource management by establishing clear property rights that incentivize long-term investment while minimizing transaction costs and information requirements. However, in regions where resources are overallocated, FIFS may create barriers that prevent efficient new operations from accessing resources, even when these new entrants would deliver superior environmental or economic performance compared to existing users. A balanced approach recognizes FIFS's governance advantages for legacy users, while incorporating flexibility mechanisms enabling beneficial entry through complementary allocation processes, transferable rights or conditional provisions.
24. It is important to note that FIFS is an allocation mechanism that determines the initial distribution of rights and is compatible with incentive mechanisms that influence subsequent behaviour, such as regulation, levies, or trading. The NZ ETS exemplifies this, emissions units are grandfathered based on historical use yet remain tradeable. However, for NPS pollution where trading faces the challenges mentioned above (e.g. unobservable emissions, stochastic loads and weak environmental causality), FIFS allocation combined with land market transactions and

[40] Fane, S., and N. D. Muller. 2019. "Market-Based Emissions Regulation When Damages Vary across Sources: What Are the Gains from Differentiation?" *Journal of the Association of Environmental and Resource Economists* 6 (3): 593–625. https://doi.org/10.1086/702852.

[41] McDowell, Richard W, Ross M Monaghan, Chris Smith, et al. 2021. Quantifying Contaminant Losses to Water from Pastoral Land Uses in New Zealand III. What Could Be Achieved by 2035? *New Zealand Journal of Agricultural Research* 64 (3): 390–410.

regulatory and voluntary instruments may deliver superior outcomes to FIFS paired with pollution unit trading that may not function cost-effectively.

Land-market driven reallocation. Agriculture (whether dairy, horticulture, sheep and beef)

25. Agriculture (whether dairy, horticulture, sheep and beef) cannot be disconnected from reliance on freshwater and biodiversity, natural capital is inherently packaged with land productivity. Reallocation through freshwater quality markets requires regulators to possess detailed information about relative values dispersed among numerous NPS operators, information that is tacit, context-specific, and complex to centralize. FIFS avoids this information problem by establishing baseline rights while allowing land markets to drive reallocation when genuinely higher-value uses emerge. FIFS operate through observable rules (for example, monitoring land ownership and use) while market-based allocation may require more complex and ongoing modelling and verification of loadings that cannot be directly observed.

Legacy Rights and Accumulated Capital

26. Legacy users operating under FIFS allocation have developed operational knowledge, optimised practices, and complementary assets that enhance resource productivity through decades of learning-by-doing (Arrow 1962[42]; Jovanovic 1982[43]). These efficiency advantages may be unobserved by regulators considering resource reallocation. Dairy farmers have invested in drainage infrastructure, nutrient management systems, animal genetics, and management expertise specifically adapted to their land's characteristics, investments predicated on secure tenure and predictable regulatory frameworks. Reallocating environmental resources through pollution markets could disrupt this accumulated capital, potentially destroying value embedded in farm-specific investments and knowledge. Moreover, uncertainty about resource allocation outcomes, particularly when regulators cannot reliably predict which reallocations improve environmental outcomes, may negatively affect long-term investment and dynamic efficiency (Stokey 2016[44]). Farmers facing potential displacement through pollution markets may reduce investments in productivity improvements and environmental stewardship. These considerations suggest that any reallocation mechanism should carefully weigh the benefits of resource redistribution against the costs of disrupting accumulated knowledge and discouraging investment.

[42] Arrow, Kenneth J. 1962. "The Economic Implications of Learning by Doing." *The Review of Economic Studies* 29 (3): 155–73.
[43] Jovanovic, Boyan. 1982. "Selection and the Evolution of Industry." *Econometrica: Journal of the Econometric Society*, 649–70.
[44] Stokey, Nancy L. 2016. "Wait-and-See: Investment Options under Policy Uncertainty." *Review of Economic Dynamics* 21: 246–65.

Limitations of *First in, First Served*

27. FIFS allocation may hinder dynamic efficiency by preventing resource reallocation to potentially more productive uses. New operations potentially employing superior technology, management practices, or environmental performance may not access overallocated resources regardless of efficiency advantages. This becomes particularly problematic during sector growth phases, as FIFS locks resources with incumbents even where new entrants would deliver greater economic or environmental value. While FIFS protects legacy users' accumulated capital and knowledge, these learning-by-doing advantages reflect past investment and may not guarantee continued superiority as technology, practices, and environmental understanding evolve.

Flexibility of *First in, First Served*

28. A pragmatic policy design approach should entail mechanisms enhancing FIFS flexibility while preserving its governance advantages. This approach could apply FIFS to existing users while employing planned allocation or competitive processes enabling strategic expansion in appropriate locations. Making FIFS rights transferable through land or water markets allows resources to flow toward higher-value uses through voluntary exchange, with sellers compensated for their accumulated capital. Conditional FIFS, where grandfathered rights remain subject to performance standards or periodic review, balances security with accountability. Regional zoning approaches could designate specific areas for new dairy development using alternative allocation mechanisms, facilitating sector growth without displacing all legacy users. Sunset provisions requiring rights renewal after defined periods enable gradual reallocation while providing medium-term certainty. These modifications could allow FIFS to maintain low transaction costs and investment security while accommodating necessary adaptation and entry.
29. These flexibility mechanisms become particularly important if dairy experiences growth pressure. Under expansion scenarios, strictly maintaining FIFS allocation would force growth into suboptimal locations (wherever resources remain unallocated) rather than enabling strategic placement where productivity and environmental outcomes are optimized. Planned allocation of newly available resources, competitive processes for expansion rights in designated zones, or sunset provisions requiring periodic reallocation assessment can enable managed growth while preserving core FIFS advantages for existing operations. The appropriate balance between incumbent protection and growth accommodation depends on sector-specific conditions and policy priorities, acknowledging this trade-off enables evidence-based design.